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U.S. Congress. Senate.

Title:
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Place:
Washington, D.C.

Date:
1936

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U.S. Congress. Senate.

To Amend the Grain Futures Act.

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TO AMEND THE GRAIN FUTURES ACT

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HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE AND FORESTRY
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

H. R. 6772

AN ACT TO AMEND THE GRAIN FUTURES ACT TO PREVENT AND REMOVE OBSTRUCTIONS AND BURDENS UPON INTERSTATE COMMERCE IN GRAINS AND OTHER COMMODITIES BY REGULATING TRANSACTIONS THEREIN ON COMMODITY FUTURES EXCHANGES, TO LIMIT OR ABOLISH SHORT SELLING, TO CURB MANIPULATION, AND FOR OTHER PURPOSES

APRIL 21, 22, AND 23, 1936

Printed for the use of the Committee on Agriculture and Forestry

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TO AMEND THE GRAIN FUTURES ACT

TUESDAY, APRIL 21, 1936

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The committee met, pursuant to call, in the committee room, 324 Senate Office Building, at 10:30 a. m., Senator Louis Murphy presiding.

The committee had under consideration H. R. 6772, reading as follows:

[H. R. 6772, Report No. 1431, 74th Cong., 1st sess.]

[Omit the part in black brackets and insert the part printed in italic]

AN ACT To amend the Grain Futures Act to prevent and remove obstructions and burdens upon interstate commerce in grains and other commodities by regulating transactions therein on commodity futures exchanges, to limit or abolish short selling, to curb manipulation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Grain Futures Act (U. S. C., title 7, sec. 1) is amended to read as follows: "This Act may be cited as the 'Commodity Exchange Act.'"

SEC. 2. The Grain Futures Act (U. S. C., title 7, secs. 1 to 17, inclusive) is amended by striking out the word "grain" wherever it appears in such Act and inserting in lieu thereof "commodity", "any commodity", or "commodities", as the case may require, and by striking out the phrase "cash grain" wherever such phrase appears and inserting in lieu thereof "any cash commodity".

SEC. 3. Section 2 of the Grain Futures Act (U. S. C., title 7, sec. 2) is amended by—

(a) striking out the third sentence of paragraph (a) and inserting in lieu thereof the following: "The word 'commodity' shall mean wheat, [cotton,] rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, and eggs."; and

(b) adding at the end of paragraph (a) the following sentences: "The words 'cooperative association of producers' shall mean any cooperative association, corporate or otherwise, not less than 50 per centum owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with an Act of Congress of February 18, 1922 (U. S. C., title 7, secs. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations, provided that business done for the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922. The words 'member of a contract market' shall mean and include individuals, associations, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. The words 'futures commission merchant' shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sales of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any

money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. The words 'floor broker', shall mean any person who, in or surrounding any 'pit', 'ring', 'post', or other place provided by a contract market for the meeting of persons similarly engaged, shall engage in executing for others any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, and who for such services receives or accepts any commission or other compensation. The words 'the commission' shall mean the Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney general."

SEC. 4. Section 4 of the Grain Futures Act (U. S. C., title 7, sec. 6) is amended by—

(a) striking out the word "except" at the end of the first paragraph;

(b) striking out all of paragraph (a); and

(c) striking out the parentheses and letter "b" and the word "Where" at the beginning of paragraph (b) and inserting in lieu thereof the words "except, in any of the foregoing cases, where."

SEC. 5. The Grain Futures Act is amended by adding after section 4 (U. S. C., title 7, sec. 6) the following new sections:

"SEC. 4a. (1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market which may be done by any person as the commission finds is necessary to diminish, eliminate, or prevent such burden. Nothing in this section shall be construed to prohibit the commission from fixing different trading limits for different commodities, markets, futures, or delivery months, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs (A) and (B) of this section, or from exempting transactions commonly known to the trade as 'spreads' or 'straddles' or from fixing trading limits applying to such transactions different from trading limits fixed for other transactions.

"(2) The commission shall, in such order, fix a reasonable time (not to exceed ten days) after the order's promulgation; after which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person—

"(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the commission in such order for or with respect to such commodity; or

"(B) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market, any amount of such commodity that shall result in giving such person a net long or net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the commission for net long or net short position in such order for or with respect to such commodity.

"(3) No order issued under paragraph (1) of this section shall apply to transactions which are shown to be bona fide hedging transactions. For the purposes of this paragraph, bona fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity or, conversely, purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such purchases are offset by sales of the same cash commodity. There shall be included in the amount of any commodity which may be hedged by any person—

"(A) the amount of such commodity such person is raising, or in good faith intends or expects to raise, within the next twelve months, on land (in the United States or its Territories) which such person owns or leases;

"(B) an amount of such commodity the sale of which for future delivery would be a reasonable hedge against the products or byproducts of such commodity owned or purchased by such person, or the purchase of which for future delivery would be a reasonable hedge against the sale of any product or byproduct of such commodity by such person.

"(4) This section shall apply to a person that is registered as a futures commission merchant or as floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agent thereof.

"SEC. 4b. It shall be unlawful for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of (1) any contract of sale of any commodity in interstate commerce, or (2) any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of any contract market for or on behalf of any person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

"(A) to cheat or defraud or attempt to cheat or defraud such person;

"(B) willfully to make or cause to be made to such person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

"(C) willfully to deceive ot attempt to deceive such person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

"(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

"SEC. 4c. It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

"(A) if such transaction is, is of the character of, or is commonly known to the trade as, a 'wash sale', 'cross trade', or 'accommodation trade', or is a fictitious sale;

"(B) if such transaction is, is of the character of, or is commonly known to the trade as, a 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', or

"(C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

'Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall not have been disapproved by the Secretary of Agriculture. Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

"SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless—

"(1) such person shall have registered, under this Act, with the Secretary of Agriculture as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

"(2) such person shall, whether a member of nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person or accruing to such customer as the result of such trades or contracts as belonging to such customer. Such money, securities, and property shall not be used to margin or guarantee the trades or contracts, or to secure or extend the credit of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property may be deposited or pledged separately and apart from, or commingled with, the deposits and pledges of such futures commission merchant with any bank or trust company and that such share thereof as shall be necessary to margin, guarantee, or secure the contracts or trades of such customer carried with the clearing house organization of such contract market or with a member of such contract market, may be deposited or pledged with such clearing house organization or with such member.

"SEC. 4e. It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this Act, with the Secretary of Agriculture as such floor broker and such registration shall not have expired nor been suspended nor revoked.

"SEC. 4f. (1) Any person desiring to register as futures commission merchant or as floor broker hereunder shall be registered upon application to the Secretary of Agriculture, which application shall be made in form and manner to be prescribed by the Secretary of Agriculture, giving such information and facts as the Secretary of Agriculture may deem necessary concerning the business in which the applicant is or will be engaged, including, in the case of applications of futures commission merchants, the names and addresses of the managers of all branch offices and of all correspondents and agents engaged in soliciting or accepting on behalf of such applicant any orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any board of trade, and including also the names of its officers and partners, if a partnership, and of its officers, directors, and stockholders, as the Secretary of Agriculture may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the Secretary of Agriculture the above-mentioned information and such other information pertaining to his business as the Secretary of Agriculture may require. All registrations shall expire on the 31st day of December of the year for which issued.

"(2) Any person registered as futures commission merchant hereunder shall post in a conspicuous place in each of the officers maintained by such person in the United States in which orders for the purchase or sale of any commodity for future delivery are solicited or accepted, the original or duplicate copy (issued by the Secretary of Agriculture) of such person's registration certificate as such futures commission merchant.

"SEC. 4g. If any person registered hereunder as futures commission merchant or floor broker shall violate any of the provisions of this Act, or any of the rules or regulations of the Secretary of Agriculture hereunder, or shall fail or refuse to make any report required by the Secretary of Agriculture regarding the transactions of such person, or the transaction of the customers thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, or shall fail or refuse to keep the books and records pertaining to such transactions in the form and manner required by the Secretary of Agriculture, or shall fail or refuse to keep such books and records open to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice, the registration of such person may be suspended or revoked after notice and hearing in accordance with the procedure and subject to the judicial review provided in paragraph (b) of section 6 of this Act.

"SEC. 4h. It shall be unlawful for any person—

"(1) to conduct any office or place of business anywhere in the United States or its territories for the purpose of soliciting or accepting any orders for the purchase or sale of any commodity for future delivery, or for making or offering to make any contracts for the purchase or sale of any commodity for future delivery, or for conducting any dealings in commodities for future delivery that are or may be used for

(A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or

(b) determining the price basis of any such transaction in interstate commerce, or

(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fullment thereof,

if such orders, contracts, or dealings are executed or consummated otherwise than by or through a member of a contract market; or

"(2) falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a futures commission merchant registered under this Act, or the agent of such registered futures commission merchant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.

"SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture. Such person shall also keep books and records of transactions coming within the provisions of (1) and (2) hereof, which books and records shall show complete details concerning all such transactions, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice."

SEC. 6. Section 5 of the Grain Futures Act (U. S. C., title 7, sec. 7) is amended by—

(a) striking out the word "purpose." at the end of paragraph (a) and inserting in lieu thereof the following: "purpose: *Provided,* That any board of trade not so located shall be designated as a 'contract market' if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture:"; and

(b) striking out the word "or" after the word "prices" in paragraph (d) and inserting in lieu thereof the word "and".

SEC. 7. The Grain Futures Act is amended by adding after section 5 (U. S. C., title 7, sec. 7) the following new sections:

"SEC 5a. Each contract market shall—

"(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or isued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

"(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

"(3) when so directed by the Secretary of Agriculture, require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may

prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agiculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

"(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provisions for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent 'squeezes' and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such 'squeezes' and market congestion;

"(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery, at least three business days prior to such date. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices; and

"(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated.

"SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market' in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act."

SEC. 8. Section 6 of the Grain Futures Act (U. S. C., title 7, secs. 8, 9, 10, and 15) is amended by—

(a) striking out the first sentence of paragraph (b) and inserting in lieu thereof the following: "If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade, he may serve upon such person a complaint stating his charges in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further nctice of the Secretary of Agriculture refuse all trading privileges to such person, and to show cause why the registration of such person, if registered as futures commission merchant or as floor broker hereunder, should not be suspended or revoked.";

(b) striking out the words "said commission" after the words "before the" in the second sentence of paragraph (b) and inserting in lieu thereof "Secretary of Agriculture";

(c) striking out the word "who" in the second sentence of paragraph (b) and inserting in lieu thereof "which referee";

(d) striking out the words "as chairman of the said commission" in the second sentence of paragraph (b) after the words "to the Secretary of Agriculture";

(e) striking out the words and numerals "of section 12" after the word "penalties," in the third sentence of paragraph (b);

(f) inserting, after the word "amended" in the third sentence of paragraph (b) the following: "and supplemented (U. S. C., title 49, secs. 12, 46, 47, and 48)";

(g) striking out the word "or" after the word "commission," in the third sentence of paragraph (b) and inserting in lieu thereof the word "and";

(h) striking out the fourth sentence of paragraph (b) and inserting in lieu thereof the following: "Upon evidence received, the Secretary of Agriculture may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person.";

(i) striking out the word "commission" wherever it appears in the sixth, seventh, and eighth sentences of paragraph (b) and inserting in lieu thereof the words "Secretary of Agriculture";

(j) striking out the words "its chairman or to any member thereof" after the word "to" in the seventh sentence of paragraph (b) and inserting in lieu thereof the word "him"; and

(k) striking out the word "Code" at the end of paragraph (b) and inserting the following: "Code, as amended."

SEC. 9. The Grain Futures Act is amended by adding after section 6 (U. S. C., title 7, secs. 8, 9, 10, and 15) the following new sections:

"SEC. 6a. (1) No board of trade which has been designated as a 'contract market' shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

"(2) No rule of any board of trade designated as a 'contract market' shall forbid or be construed to forbid the payment of compensation on a commodity unit basis or otherwise, by any such cooperative association to its regional or local member associations for business received by such cooperative association provided no part of any such compensation other than amounts paid as dividends on capital stock is returned to producer patrons of such regional or local member associations otherwise than on a patronage basis and not more frequently than annually; nor shall the governing body of any board of trade designated as a contract market exclude from membership in, and all privileges on, such board of trade, any duly authorized representative, of any cooperative association, as herein defined which is otherwise qualified, because of the payment of such compensation.

"SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a 'contract market' may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall

be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense."

SEC. 10. The Grain Futures Act is amended by adding after section 8 (U. S. C., title 7, sec. 12) the following new section:

"SEC. 8a. The Secretary of Agriculture is authorized—

"(1) to register futures commission merchants and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Secretary of Agriculture; and

"(2) to refuse to register any person if such person has violated any of the provisions of this Act or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked; and

"(3) to suspend or revoke the registration of any futures commission merchant who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Secretary of Agriculture under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired; and

"(4) to fix and establish from time to time fees and charges for registrations and renewals thereof and for copies of registration certificates, not to exceed $10 for each such registration, renewal, or copy; and

"(5) to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act; and

"(6) to communicate to the proper committee or officer of any contract market and to publish, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Secretary of Agriculture disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers."

SEC. 11. Section 9 of the Grain Futures Act (U. S. C. title 7, sec. 13) is amended by:

(a) striking out the word "section" and the numeral "4" and inserting in lieu thereof the following: "section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, or section 4i";

(b) inserting after the comma following the word "Act" the following: "or who shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall corner or attempt to corner any such commodity,";

(c) striking out the words "said section" after words "mentioned in" and inserting in lieu thereof words "section 4 of this Act"; and

(d) inserting after the word "deliver" the words "or cause to be delivered".

SEC. 12. If any provision of this Act which is amendatory of any section of the Grain Futures Act, or the application thereof to any person or circumstances is held invalid, the provisions of the section of the Grain Futures Act which is amended by such provision of this Act shall apply to such person or circumstances. No proceeding shall be abated by reason of any amendment to the Grain Futures Act made by this Act but shall be disposed of pursuant to this Act.

SEC. 13. This Act shall take effect ninety days after the date of its enactment.

SEC. —. *That section 1 of the Act of August 11, 1916, known as the "United States Cotton Futures Act", as amended, is amended by inserting after the words "United States Cotton Futures Act", the following new paragraphs:*

"For the reasons hereinafter enumerated, transactions in cotton involving the sale thereof for future delivery as commonly conducted on cotton-futures exchanges and known as "futures" and the other transactions hereinafter described are affected with a national public interest which makes it necessary to provide for regulations and control of such transactions and of practices and matters related thereto in order to protect and effectively regulate interstate and foreign commerce:

"(1) Such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling cotton in interstate and foreign commerce; (2) the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of cotton and to facilitate the movements thereof in interstate and foreign commerce; (3) such transactions are utilized by shippers, dealers, manufacturers, and others engaged in handling cotton in interstate and foreign commerce as a means of hedging themselves against possible loss through fluctuations in prices; (4) the transactions and prices of cotton on such cotton-futures exchanges are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur, as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling cotton in interstate and foreign commerce; (5) such speculation, manipulation or control is frequently effectuated and such sudden or unreasonable fluctuations of prices are at times brought about by purchases or sales of future contracts in large quantities by some person acting alone or in association with other persons or affiliations; (6) that owing to conditions naturally incident to the growing and marketing of the cotton crop and the uncertainty as to its grades and qualities, such speculation, manipulation, or control, and such sudden or unreasonable fluctuations of prices, cannot be prevented unless only standard forms of future contracts are made and dealt in upon such cotton-futures exchanges and matters relating thereto necessary to insure fulfillment of such contracts are regulated; (7) and that such speculation, manipulation, and control, and such fluctuations in prices are an obstruction to and a burden upon interstate and foreign commerce in cotton and render regulation of such cotton-futures exchanges, and the dealings thereon, imperative for the protection of such commerce and the national public interest therein."

SEC. —. Section 5 of such Act of August 11, 1916, as amended, is amended by striking out paragraph "Sixth" and substituting therefor the following:

"Sixth. Provide that any cotton tendered under such contract shall contain not more than three grades, which shall be contiguous, in each one hundred bales; that such tender shall be the full number of bales involved in such contract, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that on the seventh business day prior to delivery and not later than the eighteenth calendar day of the delivery month the person making the tender shall give to the person receiving the same written notice of the date of delivery; and that on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade; that delivery shall be made only on one of four days in each delivery month, which shall be fixed in regulations prescribed by the Secretary of Agriculture as delivery days; and that the delivery of cotton on such contract shall be made at a place where a cotton-futures exchange is located."

SEC. —. Section 6 of such Act of August 11, 1916, as amended, is amended by striking out the words "sixth business day" and inserting in lieu thereof "eighth business day."

SEC. —. Such Act of August 11, 1916, as amended, is amended by inserting after section 22 the following new section:

"SEC. 23. (a) No person who is a member of a clearing house or clearing association of any cotton-futures exchange, or a member of any organization performing the functions of a clearing house for any cotton-futures exchange, shall, directly or indirectly, be engaged in the business of a spot cotton merchant or have any financial or other interest in, or lend any financial aid to, any such business; and no person engaged in the business of a spot cotton merchant shall, directly or indirectly, have any financial or other interest in, or lend any financial aid to, any such member.

"(b) The tender upon futures contracts more than once by the same person in the same calendar month of notices of delivery of the same cotton is hereby prohibited.

"(c) Each member of a cotton-futures exchange engaged in the execution for others of orders for the purchase and sale of cotton for future delivery shall demand and receive from both members and nonmembers of such exchange for whom he executes such orders, and shall require to be maintained at all times subject to reasonable provisions for call and notice, minimum margins on their net open interests, with respect to such orders, in purchases and sales

of cotton for future delivery. Such margins for members of the cotton trade or textile manufacturers shall be not less than 5 per centum and for other persons not less than 10 per centum of the current market price of the cotton involved.

"(d) Any person who shall sell any cotton for shipment from one State to another, or export to a foreign country, on credit terms, shall, upon the fixing of the price of the cotton involved, demand and receive from the buyer or his agent a margin of not less than 10 per centum of the market price of such cotton; and in no case shall any such seller ship or deliver for shipment from one State to another or to a foreign country any cotton involved in any such sale on which the price shall not have been fixed.

"(e) Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined not more than $1,000, or be imprisoned not more than six months, or both, for each such violation."

Passed the House of Representatives June 3, 1935.

Attest: SOUTH TRIMBLE, *Clerk.*

Senator MURPHY. The committee will be in order.

In the absence of the chairman of the committee and at his request, I shall preside at these hearings. The committee decided in executive session the other day to devote the first day to hearing testimony of the opponents of the bill and the second day to the testimony of the proponents of the bill.

Senator BULOW. I think you have that wrong; it was 2 days to the opponents and 1 day to the proponents.

Senator MURPHY. I am relying on the statement of the clerk of the committee. However, I accept the correction as made by the Senator from South Dakota. It is 2 days for the opponents of the bill and one day for the proponents of the bill.

The list of witnesses is so very, very long that if we are to get through with these hearings, and we must get through with them in the time specified, it will be necessary for each witness to confine himself as closely as possible to the text and to occupy just as little time as is necessary to state his position.

The first witness is Mr. J. B. Smith. Is Mr. Smith here?

Mr. J. B. SMITH. Yes, sir.

Senator MURPHY. Please state your name and business.

STATEMENT OF J. B. SMITH, PRESIDENT, MILLERS' NATIONAL FEDERATION, CHICAGO, ILL.

Mr. SMITH. My name is J. B. Smith. I am president of the Millers' National Federation. I was in the milling and grain business for 35 years before assuming the duties of president of the Millers' National Federation.

Senator MURPHY. Your residence is where?

Mr. SMITH. Chicago.

Senator MURPHY. Proceed with your statement in your own way.

Mr. SMITH. The millers' interests in this bill is due to the future market being a necessary adjunct and facility of the milling business and without the futures market as a hedging facility, the procedure in marketing as regards milling would have to be revolutionized. We are now appearing in general opposition to the entire bill. There are certain phases of it to which we are opposed and relative to which we desire to make some comment and recommendation.

Millers almost universally are opposed to speculation in their own business. Nevertheless, we are in the strange position of having to

defend speculation in order to retain the hedging protection in the option market. Our interest in the bill is as to the effect it will have upon our ability to hedge our sales and purchases economically and without any more expense or speculation than we now have. The bill appears to recognize hedging as a sound and proper function, used to avoid speculation and market losses. And if hedging is a sound procedure, and certainly it is, it is the desire of the millers and they want to go on record as having the situation so exist that hedging in the options will not be interfered with and so that it will not cost any more than it does now to hedge and that it will be just as economical. At the present time, there are no limitations on open lines. Reports are required where the net position of a member exceeds 200,000 bushels.

Senator POPE. Two hundred thousand bushels of wheat?

Mr. SMITH. That is right, Senator. Section 4 (a) of H. R. 6772 proposes to provide for fixing a limit. I see nothing in here that sets a limit. As I understand it, it provides for a procedure to set a limit. In some of the previous hearings it has been suggested that that be 2,000,000 open interests for any one person or firm and 2,000,000 for trading in a single day. As I understand the provision of this bill, however, at a hearing, any limit that might be decided upon could be set.

I understand also that it is not proposed to apply the limitation to bona fide hedging. It is the position of the milling industry, and we want to be written into the record as expressing that opinion, that any limitation on the amount of trading will narrow the market to such an extent that a constant hedging as now exists will not prevail.

The millers desire to go on record with the statement that if limitations are placed thereon, there may be times when hedging could not be successfully carried out. To have an adequate hedging market, you must have many buyers and many sellers, both hedgers and speculators in the market, constantly trading all the time in order to provide the hedgers an opportunity to get in and out without a loss. That is due to the fact that it would just simply be a miracle and probably never would happen, probably never has happened, that there would be the same amount of bona-fide buying hedges as bona-fide selling hedges. In other words, the cash actual transactions of sellers against cash holdings could hardly be expected to occur against a similar situation with buyers.

It is my opinion and the opinion of the millers who use the hedging market that speculators take up that gap that exists between the buyers and sellers on bona-fide hedging, and if you take the speculator out, the probability is you will have more fluctuations in the market than now and not as steady a market as you now have. I probably can express myself about that better by explaining the experience I have had and other millers have had with the St. Louis feed-option market. There is an option market on millfeed, bran, and shorts, in St. Louis and in Kansas City. There are not enough traders in and out of that market to make it a good hedging market. I have had the experience of furnishing orders to sell certain amounts of bran or shorts at a figure provided the trade could be gotten off and have failed to get the hedge off entirely because the market was so narrow it would not absorb it. At times when I have gotten into that market

by going ahead and getting into it, by taking a little sacrifice on the hedge, I have gotten into it and then when I tried to get out, tried to buy myself out, I have lost from $2 to $3 a ton because there were not enough traders in the market to enable me to get in and out.

Senator NORRIS. Will you explain just what you mean by getting in and out?

Mr. SMITH. If a miller sells flour, and he has to have from 30 to 60 days run as a rule on his books, that is, enough flour booked to keep operating, that might mean with a thousand-barrel mill he would have 50,000 barrels on his books. For every barrel of flour that is on his books, there is about 8 pounds of feed that comes off the wheat. Well, he can hedge and buy the wheat and that part is a fixed factor, he has the flour sold at a fixed price. He knows what his conversion charges are but he has to take what he can get for the feed as he produces it and markets it. The idea is that if you had a good liquid option market on feed, at the time you made your flour sale you could step into the market and sell your feed and eliminate the speculation on your feed. Then you would have all the factors fixed.

Senator NORRIS. The same conditions would not apply to buying and selling the feeds that do apply to flour and wheat?

Mr. SMITH. To wheat; yes, sir. Senator, the option market on wheat is the same, it is the same on feed as it is on wheat. You can buy your hedges the same way.

Senator CAPPER. Do they make use of that option market to any extent?

Mr. SMITH. Oh, yes, Senator, they do; but the difficulty is that you can only get off a limited amount because if you go in there and try to sell the amount you would like to sell, there are not enough traders to take it and to get the hedge off. You have to sacrifice your price.

Senator CAPPER. How does the speculator enter into the market in the selling of feed?

Mr. SMITH. It does not probably so much in feed, but the point I am trying to make is that there being so few traders, it is impossible to hedge properly in that market and if the same condition prevailed in the grain futures market, you would have the same experience in getting hedges off on wheat.

Senator FRAZIER. Don't the millers sell their feed in advance just the same as they do their flour?

Mr. SMITH. You can't sell feed in advance—sometimes you can sell it 30 days ahead but you can't sell it 60, 90, or 120 days ahead without making a very marked reduction.

Senator NORRIS. What class of buyers are the buyers where you sell that feed for future delivery?

Mr. SMITH. Probably mixers, who make mixed feeds.

Senator NORRIS. Are there many speculators in that game?

Mr. SMITH. I suppose that to some extent probably the feed mixers may use their own judgment as to when to buy and when to sell. I wouldn't assume that there were a great many people that speculated on feed like they do on wheat.

Senator NORRIS. The people who deal in it deal in it because they are using the products some way?

Mr. SMITH. That is right. They don't have the advantage of a speculator to make the trading back and forth which you do have in

the wheat market. Of course, the condition of corn, and so forth, does have effect on that market, the supply of other feeds does affect the futures market.

The millers are so fearful and concerned that they wired me and asked me to appear for them. They are concerned about any limitation on trading. They fear the mere fact that there is a limitation or a limitation proposed, the mere fact that you can call a hearing and set limits, that those very factors themselves will eliminate speculators from the market and make it a narrow market. They are so concerned about it that they have asked me to state upon the record here that in preference to any such regulation or provision there be made in lieu thereof some such provision as prevailed when they had the grain code and that that be substituted in lieu of this provision. As I remember that, it was a 10-percent initial margin on lines of 2,000,000 bushels and 25 percent margin on all above that. In other words, the millers very much prefer such regulation as you decide to make on speculation brought about by the margin route rather than by limitation on trades or holdings.

In general, that is my statement.

Senator NORRIS. I want to ask you this in reference to your last statement: They prefer what?

Mr. SMITH. They prefer that any effort that is made to control speculation be made by provisions setting the margins that shall be put on trades rather than by setting out definite rules for limiting the amount of trading.

Senator NORRIS. How could you do that?

Mr. SMITH. The amount of margin that you have to put up would have a direct effect on the amount of trading a man can do. The miller recognizes that that is going to cost him somewhat more to carry his hedges but he thinks it will leave a more liquid open market into which he can get in and out.

Senator NORRIS. You would limit the margin they would carry?

Mr. SMITH. The amount of money they have to make up to make trades, a guarantee.

Senator NORRIS. You mean we would regulate by statute the amount of money they would put up on a given hedge?

Mr. SMITH. Possibly not by staute but by an administrative regulation under it.

Senator NORRIS. Well, it would have that effect. I am afraid I still do not quite get the idea that you have in mind.

Mr. SMITH. Well, if it costs 4 cents a bushel to carry a hedge today, let's call that a hedge on a cash holding, an actual bona-fide hedge operation. A speculator that had to pay 25 percent or 15 percent or 20 percent of the value of the grain would be very much less inclined to carry a large line if it cost him three or four or five times as much to carry it as now when you have the present regulation.

Senator NORRIS. You mean by that that the percentage of the value they have got in the product should be regulated?

Mr. SMITH. As I remember, under the grain code, on bona-fide hedging, the trader had to put up 10 percent of the value of the grain.

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Senator NORRIS. Would they increase or decrease that percentage?

Mr. SMITH. On speculators at that time they had it up to 25 percent of the value of the grain, on all above 2,000,000 bushels, I think it was.

Senator NORRIS. That is, they were required to put up 25 percent?

Mr. SMITH. The exchanges regulated that themselves and made them put it up.

Senator NORRIS. What was the real purpose of that? Did that limit the hedging then or have a tendency to do it?

Mr. SMITH. I think they felt they could control speculation that way.

Senator NORRIS. In reality, they made it unprofitable?

Mr. SMITH. Well, they made it more expensive.

Senator NORRIS. That would be the same thing.

Mr. SMITH. Yes; that is probably a better way to state it.

Senator POPE. Mr. Smith, aren't there some regulations now by the grain futures administration both on wheat futures and on rye and barley futures? For instance, I have before me the complaint in the Cutten case where it is alleged that Mr. Cutten on a great many different days had more than 500,000 bushels of open commitments of wheat and more than 200,000 bushels of oats and rye on certain days. Isn't there a limitation now by the regulation of the grain futures administration?

Mr. SMITH. I don't remember that there was a limitation. It seems to me that there was a provision whereby the Secretary of Agriculture and one or two others could call a hearing and make an investigation of whether or not a man was carrying an excessive line. I am not so familiar with that as I should be.

Senator POPE. On this whole complaint, the complaint is that he carried amounts in excess of these figures which I have used?

Mr. SMITH. There may be a limit there.

Senator POPE. I think there is a limit of 500,000 bushels of wheat futures and 200,000 on rye and barley.

Mr. SMITH. I think that is right.

Senator POPE. Are those limits objectionable?

Mr. SMITH. I don't think that the millers would object to anything that was felt wise to restrict dangerous manipulative lines; no.

Senator POPE. They accept bona-fide hedging in this law, as it is defined.

Mr. SMITH. Their fear of it, as I stated awhile ago, is the fact that you do set up the machinery for limitations and hearings, and their fear of it is that it will drive the speculators out of the market to such an extent that there will not be the trading back and forth that there is today. The mere fact that those provisions exist will eliminate some of the speculators that carry a great deal of wheat after it has left the farm.

Senator MCNARY. Mr. Smith, this bill is to expand the Grain Futures Act. I think from your testimony your objection to the expansion is to section 4, which reads, omitting some unnecessary words—

excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

You don't want Congress to make any effort to restrict excessive speculation, particularly when it causes sudden or unreasonable fluctuations or unwarranted changes in the price of that commodity? Is that the burden of your objection to this bill?

Mr. SMITH. Well, it leaves in someone else's hands or someone's hands to decide what is excessive speculation.

Senator MCNARY. Are you here defending excessive speculation that causes unreasonable fluctuations?

Mr. SMITH. No; I am attempting to defend an open market in which we can hedge.

Senator MCNARY. I think you can do that under the present act. This directs itself to that thing which was considered an evil and which is called excessive speculation. I don't think anyone can defend speculation that brings about unreasonable fluctuations or unwarranted changes in the price level of a commodity. Do you defend that?

Mr. SMITH. No; except this, that the provisions here fix that whoever decides that can set what they consider to be excessive speculation.

Senator MCNARY. How would you remedy that to meet your proposition? If you are offended by their excessive speculation and think it is a practice that should be controlled, how would you do it?

Mr. SMITH. I think I would attempt to do it by placing a burden on the amount of margins you had to put up.

Senator MCNARY. I heard that statement a moment ago. I can't conceive that that would be a practice that you could indulge or follow as a practicable means. Do you fear that the restrictions placed here in attempting to eliminate this practice would injure the reasonable speculative phases of the market?

Mr. SMITH. It will injure the ability of bona-fide hedges to hedge and get in and out of the market without losses.

Senator POPE. Do you object to this definition of hedging which is given in the bill?

Mr. SMITH. How does that read?

Senator POPE. It appears in subsection 3, on page 6:

For the purposes of this paragraph, bona-fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity or, conversely, purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that purchases are offset by sales of the same cash commodity.

Mr. SMITH. That is bona-fide hedging; yes; somebody owns a commodity and is selling an option against it.

Senator POPE. That is a fair definition of hedging?

Mr. SMITH. Yes; I think it is

Senator POPE. Since that is exempted and no limits placed upon hedging under that definition, wouldn't that be fair to traders?

Mr. SMITH. That part there is all right, except, as I stated a while ago, the limitation on trading does affect your ability to get your hedges in or out. I have had this experience, running a line of 35 elevators, taking in 50 to 100 thousand bushels of wheat a day; let me state it this way—taking in 50,000 bushels a day, the mill that day might sell 10,000 but have it in flour. All the flour sales may be covered with cash wheat, and are. That leaves me with about 40,000

bushels of cash wheat I have taken in from the farms. I am not concerned as long as I can hedge; I would like to pay the farmer a dollar and a half or $2 or more, because I can make more money if I do. I go down to the futures market and sell 40,000 May or September or whatever it is, and as long as I can do that, without taking a cent loss or a half a cent loss or a 2-cent loss, I can maintain my price out in the country and pay the farmer any price that is going and not be concerned about it at all.

Senator POPE. You can do that under this definition?

Mr. SMITH. Yes; but if you narrow the market, traders may not take my hedges and it will drop down a cent or two.

Senator MCNARY. Have you found, due to the limitations in the Grain Futures Act, any difficulty in speculation and hedging?

Mr. SMITH. Yes; there have been times when I couldn't get hedges without taking a cent decline on them because there was little trading in the market.

Senator MCNARY. Has it affected injuriously the marketing conditions that obtain in commodities?

Mr. SMITH. Only to this extent: If you find that conditions prevailing, you either quit taking the wheat in the country or you lower the price enough to take up that slack.

Senator MCNARY. I recall, as a member of this committee, when we were discussing the Grain Futures Act in the almost unlimited hearings that you complained then about the very thing that you are complaining about now—you thought it would destroy speculation in grain and thereby injure the price level. It has not occurred at all. This is simply to control excessive speculation when it causes sudden or unreasonable fluctuations or unwarranted changes in the price of the commodity, leaving the definition of hedging the same as it is in the old bill.

Mr. SMITH. May I ask, Senator, what would be excessive speculation? How would that be determined?

Senator MCNARY. You are an expert and I am just a mere Member of Congress. I would rather have your views on that. I have my own.

Mr. SMITH. I have asked many millers and many grain men what would be excessive speculation and they don't seem to be able to know themselves.

Senator MCNARY. The bill itself says "causing sudden or unreasonable fluctuations or unwarranted changes in the price level."

Mr. SMITH. Excessive speculation would be pretty much a matter of opinion, that of whoever had the power to regulate it.

Senator CAPPER. Didn't we have an example when Mr. Cutten ran away with the market and had control of it to the injury and harm of the sellers and buyers who were in the market for legitimate purposes and the Department had to attempt to stop it?

Mr. SMITH. Well, if you sell short, the time comes when you have to buy back.

Senator CAPPER. Is it in the interest of the market to have a man like Cutten in control of the market and dealing in millions of bushels of paper wheat and with the market out of the hands of those who are supposed to be laying down the rules under which fair trading shall be done on an honest basis?

Mr. SMITH. The millers are not trying to attempt any defense of those people.

Senator CAPPER. I think that is what the provisions of this bill are attempting to do, to eliminate the possibility of men like Cutten having control of the grain trade as we find it in these great markets, for instance, the market at Chicago.

Senator POPE. For instance, Mr. Smith, Mr. Cutten had several million bushels open commitments under 35 different accounts in the names of his relatives and friends, and the Circuit Court of Appeals found that he was manipulating the market and he could do so under this bill because this law as it now stands does not apply to past offenses.

Mr. SMITH. Could he do it under the present bill?

Senator POPE. No; it has been amended. There are some very strenuous penalties in here for doing that sort of thing. A penitentiary offense now applies to that sort of thing. Heretofore, all that could be done was to take away your privileges of trading on the market for 2 years. There is some very strong language here. The Circuit Court of Appeals found that Cutten did the very thing that this bill prohibits.

Senator NORRIS. As I understand it, he was doing these things, but there was no law at that time to punish him for it. That is one of the objects of this bill, is it not?

Senator POPE. Yes.

Senator NORRIS. If he did the same thing and this bill were law, he would be liable?

Senator POPE. Yes. The law as it now stands does not apply to past offenses. It was shown that for 2 or 3 years he had done all of these things, practically cornered the market and had violated the regulations of the grain futures administration and the Chicago Board of Trade and had had a very serious effect upon the market. The Circuit Court of Appeals found that he had done all of those things but because our present law does not apply to past offenses, he got out entirely. The Circuit Court of Appeals found that he did violate the law. Therefore, this law amends it so that you can catch a man like that and also put into the law the power to limit trading.

Mr. SMITH. Senator, I would like to make this statement: The millers have this feeling about the bill, that the provisions of this bill permit the setting of a limit, and yet no limit is set in it though. Under its provisions, however, I think they could set it, if they chose to do so, at a million or a half a million. They might set it at a quarter of a million. They could set it at whatever they felt like setting it. When you get loaded up with a million or two million bushels of wheat, that is not a very large operation—many of them out in Kansas do that—but with your hedges out, it would not be a very comfortable feeling to know that the limitations on lines could be limited after you have that line out.

Senator SCHWELLENBACH. Are you referring to a bona fide hedging operation?

Mr. SMITH. Yes; because the time comes when you have got to get out.

Senator SCHWELLENBACH. This act does not prevent bona fide hedging?

Mr. SMITH. Yes; but we have got our option trades out; you have to do it when you deliver your cash wheat or sell your flour. If you narrow the market so there are not enough traders in there to get in and out, it affects the bona fide hedger.

Senator SCHWELLENBACH. Did I understand you to say that the millers were willing to have this margin limitation or margin requirement apply to bona fide hedging as well as speculation?

Mr. SMITH. They suggested to me to make a recommendation to the committee here that in lieu of limitation on lines, that a provision be made for controlling speculation by the amount of margins to be put up.

Senator SCHWELLENBACH. Would that apply to all, including bona fide hedging?

Mr. SMITH. I think it would; yes; and it would be more expensive than it is today because we would have more money up on hedges but they prefer to take that rather than limitations.

Senator MURPHY. In your opinion, the effect of that would be to limit speculation?

Mr. SMITH. That is the belief of the millers.

Senator CAPPER. What effect would an impartial Government agency having the power to check the speculative sales when they become convinced that the speculators are going beyond all reason and jeopardizing the proper conduct of the market, have? Do the millers object to that?

Mr. SMITH. No; but they prefer that you do it by this other route.

Senator CAPPER. You have got to give some agency some authority to determine what sort of regulations would be fair in the conduct of that market. You object to giving the Government that power, that authority?

Mr. SMITH. I think you ought to put it right back up to the exchanges to regulate those things so you don't have complaints about excessive speculation.

Senator CAPPER. You would put it in the hands of the Board of Trade to say what is fair?

Mr. SMITH. Yes, because I think they know how to do it, and I think they would do it if they knew what would happen to them if they didn't.

Senator MURPHY. If we are to make any progress with these witnesses, we shall have to proceed. Have you concluded your statement, Mr. Smith?

Mr. SMITH. I have.

Senator MCNARY. Do you care if I make this statement on the record? I have a very interesting and comprehensive letter from Mr. M. W. Thatcher of Washington, representing the Farmers National Grain Corporation, covering this bill. It discloses a splendid analysis of it particularly from their standpoint, and I should like to have it inserted in the record following that statement:

FARMERS NATIONAL GRAIN CORPORATION,
Chicago, April 20, 1936.

Hon. CHARLES L. MCNARY,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: The Senate Committee on Agriculture and Forestry has scheduled 2 days' hearings, Tuesday and Wednesday next, to afford to the representatives of commodity exchanges opportunity to oppose the commodity exchange bill (H. R. 6772).

For your information, we offer the following summary of the more important objectives sought by the bill:

1. To correct a defect in the present act (1922), disclosed in a decision of the United States Circuit Court of Appeals, No. 5467, October term 1935, October session 1935.
2. To prohibit excessive speculation.
3. To register commission merchants handling funds of the public and floor brokers executing the orders. The registration would be subject to suspension or revocation for cause.
4. To safeguard margins deposited by the public, declaring it to be unlawful for commission merchants to use such funds for their own private operations or to extend credit to others.
5. To minimize cheating or fraudulent practices by outlawing "Trading in privileges" (puts and calls), wash sales, cross trades, accommodation trades, and other fictitious transactions.
6. To prohibit commission merchants and floor brokers from taking customers' orders into their own account.
7. To provide protection to cooperative associations of producers. The present law requires the admission to "Contract Markets" of cooperative associations complying with certain statutory provisions. Needed protection to such cooperatives is provided which would prevent the arbitrary suspension or expulsion from membership of such cooperatives by commodity exchanges; and it would not be possible to deprive cooperatives of the rights and privileges of contract membership, meanwhile forcing them to await the result of litigation arising from the appeal by a commodity exchange of an order of the Grain Futures Commission (Secretaries of Agriculture and Commerce and the Attorney General) to the courts. The bill proposes to amend the present act so that the rights of cooperative associations on exchanges would be expressly preserved pending such appeal.
8. Under the present act, the penalty for violation of the act by a commodity exchange is the suspension or revocation of contract market designation of such exchange by the Commission created by the Grain Futures Act. The imposition of such penalty would penalize innocent producers through the closing of their market. This situation would be remedied by the present bill which provides that, in lieu of revoking the designation of a contract market, the Commission may direct the market to cease and desist from its violation of the act; failure of the market to comply with such cease and desist order subjecting it to a fine of not more than $10,000, or its officers to imprisonment for not more than 1 year, or both such fine and imprisonment.
9. Under the provisions of section 6 (b) of the present act, trading privileges on contract markets may be denied violators of the act only by order of the Commission created by the act. The bill amends this section so as to empower the Secretary of Agriculture to proceed against individual violators and thus obviates the necessity of convoking a Commission composed of three members of the President's Cabinet in order to deal with violations by individual traders on the commodity exchanges.

Speaking for the grain producers' cooperative associations, your attention is invited to the conduct of grain exchanges, particularly the Chicago Board of Trade—which handles 70 to 80 percent of all the trades in grain futures handled in the United States.

The Chicago Board of Trade was organized in 1848 and was developed in concert and collusion with the building of the railroad transportation system, banking houses, and the grain elevator facilities with their "system" of making prices for the producers' grain. There is not one Senator familiar with that sordid history covering the past 88 years who would be content to stop with the present bill (H. R. 6772).

The files of the Grain Futures Administration are filled with unhappy history and experiences encountered during the 12 years' administration of the present law. Year after year their annual reports make certain disclosure of fraud and malpractice, and request the Congress to provide remedial legislation to enable the Department to operate more effectively in the public interest.

During the 88 years of monopoly by the Chicago Board of Trade, the press has recorded many stories of gambling orgies resulting in failures, suicides, embezzlements, and corners of markets. No one has been able to portray in the press the incalculable loss of money and homes borne by the toiling farm families.

We particularly urge your reading the reports of the Grain Futures Administration for the years ended June 30, 1934–35. Several important cases

are therein reviewed; also the litigation between the Board of Trade and the grain cooperatives; also the "price collapse" during July 1933.

Picture the following: The President, the Congress, and an army of employees engaged in the program known as the A. A. A. to carry relief to the wheat farmers, amongst others. On July 9, 1933, the Secretary of Agriculture declared the imposition of a 30-cent rate of processing tax on each bushel of wheat processed. This tax yielded to the farmer about 28 cents per bushel on the wheat domestically consumed—which represented about 15 cents per bushel on the total historic production. On July 19, 1933 (10 days after the official declaration referred to) one group of speculators in Chicago wheat futures broke the market 28 cents per bushel. This occurred at the time the winter wheat harvest was going to market. The farmers suffered loss of income in marketing all of their grain as the result of the repercussions from that price debacle.

BUCKETING OF ORDERS AND CHEATING BY MEANS OF CROSS TRADES, ETC.

It has been generally assumed that bucketing of orders and cheating and fraud in connection with the handling of customers' orders cannot take place on the so-called "legitimate exchanges", i. e., those that have been licensed under the Grain Futures Act to maintain futures markets for grain. This idea, of course, has been furthered by the exchanges, who like to emphasize that they are under close governmental supervision. This is very far from the facts.

The Grain Futures Act does not deal with these practices. The exchanges have always claimed that such practices were in violation of their rules, that they could not occur and if they did occur they were adequately covered by State laws. But they do occur. Grain-exchange rules mean nothing as applied to this sort of thing because no effort is made on the part of the exchanges to discover the practices, and when pointed out their stock reply is that these things cannot happen because they are prohibited by rule.

Practices of the kind mentioned were brought forcibly to the attention of the grain exchanges in 1930, when the Grain Futures Administration brought proceedings against three brokers on the Chicago Board of Trade (*Secretary of Agriculture* v. *W. B. Massey, John S. Reddy and Philip J. Reddy*. See 1934 Annual Report of Grain Futures Administration). Two of these brokers, with the connivance of the third broker, were taking customers' orders into their own accounts at prices arbitrarily established by themselves and in a manner so as to give them a "cut-in" on prices which should have gone to the customers. The Government attempted to establish that this tampering with prices in respect to individual orders was price manipulation. In dismissing the case, the Commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General said:

"While practices of the character here involved may be detrimental to customers and may even amount to fraud, we nevertheless find difficulty in adopting the view that these constituted manipulations of the market price of grain within the meaning of the Grain Futures Act. We believe the terms "manipulate" and "manipulation" as used in the act relate to efforts to stimulate or depress the market price of grain. We do not believe that they apply to practices between brokers and their principals where the failure of customers to receive the benefit of full market price grows primarily out of acts which in reality amount to breach of duty imposed by a fiduciary relation."

One of the brokers in the above-mentioned case was suspended by the Chicago Board of Trade. He was first suspended for 5 days and when the Government showed its dissatisfaction with this disposal, a suspension period of 2 years was imposed. The board of trade did absolutely nothing as regards the other two brokers who were equally responsible.

That this was not an isolated case is indicated in the House hearings on this bill (H. R. 3009) February 5, 7, and 8, 1935, wherein on page 71 an official of the Grain Futures Administration testified that about that time it had a list of 24 persons and firms where cross trading and bucketing of orders was observed, all in Chicago. The same official testified that accountants, examining the records of 15 of the most active clearing members of the Kansas City Board of Trade, found that nine of the 15 firms all engaged in some form of cross trading or one-sided trading and that during the month of April 1931 these nine firms had transactions of this kind amounting to nearly 2,000,000 bushels of wheat, which was more than 10 percent of the total business done by the nine firms during that month.

Take a more recent case. On September 17, 1935, the Secretary of Agriculture filed complaint against Simon Wexler, a member of the Chicago Board of Trade, charging respondent with filing inaccurate, incorrect, and false reports of his position in the market. The complaint sets forth that "respondent, by means of false reports and the use of fictitious accounts, reported fictitious trades as actual trades, caused the issuance of false, misleading, and inaccurate market information, set up fictitious losses, made various and divers wash sales and cross trades at manipulated and arbitrarily established prices, and otherwise manipulated and attempted to manipulate the price of grain."

The complaint lists a long series of cross trades made during the years 1933 and 1934. The actual number of days on which the fictitious trades occurred numbered only 14, but the fictitious trades amounted to the enormous sum of 14,910,000 bushels. Six million bushels of this was in rye futures and on one day the fictitious trading in July rye amounted to 93 percent of the total trading in July rye on the Chicago Board of Trade. This is a strange kind of market to be found on one of the so-called legitimate grain exchanges.

The Wexler case is still pending before the Commission. Inquiry at the office of Grain Futures Administration brought the information that Mr. Wexler has made answer admitting his failure to file reports and waiving hearing, but denying other charges and inferences to be drawn therefrom.

So long as the future trading system is deemed necessary in the marketing of grain and since it is supported mainly by small traders scattered all over the country who are not members of any exchange, and so long as we have legislation purporting to supervise future trading, there seems to be no good reason why these nefarious practices should not be brought within the purview of the law. If the exchanges themselves regard these practices so seriously as to prohibit them by rule, then they should also welcome the strong arm of the Government in helping to put meaning into the rules.

EFFECT OF BOARD OF TRADE RULES

1. Cross trading and fictitious transactions are in violation of the Chicago Board of Trade rules. Why has not the board of trade expelled Simon Wexler? It has not even shown enough interest in the matter to conduct an investigation. Perhaps it does not even believe Wexler's admission that certain of the charges were true.

2. Manipulation of prices and failure to file reports required under the Grain Futures Act are in violation of the rules of the Chicago Board of Trade. Why has not the board of trade expelled Arthur Cutten? It must have heard of the charges filed against him. It must be informed of what the Circuit Court of Appeals in Chicago said about the evidence of his wrongdoing. The Chicago Board of Trade does not need to worry about the past tense of section 6 (b) of the Grain Futures Act. It can expel anyone for almost any cause it sees fit, including that intangible and fanciful crime described in their rules as reflecting on the good name of the association.

3. Corners are also in violation of Chicago Board of Trade rules. Why did not the board of trade expel Thomas M. Howell for corning July corn in 1931? It must have heard of the charges filed by the Secretary of Agriculture. It must be familiar with the findings of the Commission that Howell did, in fact, corner and attempt to corner the 1931 July corn.

4. Cross trading and cheating and fraud are in violation of the board of trade rules. Why did not the Chicago Board of Trade expel John S. Reddy and Philip J. Reddy, who were equally guilty with William B. Massey, in the case brought by the Secretary of Agriculture in 1930? The Chicago Board of Trade is not hampered by the strict rules of interpretation applied to the Grain Futures Act by the Commission in that case.

The Chicago Board of Trade does expel members for violation of rules. Yes; it expelled Thomas Y. Wickham some time ago for alleged violation of its margin rules by his firm, occurring while Mr. Wickham was in China. In the Wickham case, the clique in control of board of trade affairs had something to gain by eliminating Mr. Wickham as vice president and as the logical next president of the Chicago Board of Trade and because he was known for his

outspoken criticism of the way the Rosenbaum Grain Corporation had been permitted to dominate the Board of Trade.

The answer to all these questions is simply this: That board of trade rules are a handy thing to have to talk about when the question of legislation is up and they are a convenient tool by which to get rid of individuals who do not approve everything done in the name of the board of trade.

But the best thing about them is that members who stand in with the crowd in control do not need to worry about going to jail if they violate them. Aside from this, and from the standpoint of protecting the public, the rules mean exactly nothing.

We hope that this material will assist you in consideration of the testimony given by opponents and proponents of the bill.

Respectfully yours,

M. W. THATCHER,
Washington Representative, Farmers National Grain Corporation.

Senator MURPHY. Without objection, it will appear in the record. Thank you very much, Mr. Smith.

Before you proceed with your testimony, Mr. Boylan, may I suggest that this great long list of witnesses that you presented be restricted? It would appear that most of them would express the same state of mind regarding this bill, based on much the same reasons. Is that the fact?

Mr. ROBERT P. BOYLAN. It is our desire, Mr. Chairman, to conform to your opening statement. We will cooperate in making the hearing as brief as possible and will confine ourselves to technical points and there will be no duplications.

Senator MURPHY. Please give your name, address, and occupation to the reporter.

STATEMENT OF ROBERT P. BOYLAN, PRESIDENT, CHICAGO BOARD OF TRADE, CHICAGO, ILL.

Mr. BOYLAN. My name is Robert P. Boylan, and I am president of the Board of Trade of the city of Chicago. For purposes of the record, I desire to make a brief statement and then I will present Mr. C. D. Sturtevant, who is chairman of the grain committee on national affairs, and he will then in turn present the technical witnesses in order to carry out the technical discussion of features of the bill.

Mr. Chairman, I feel particularly gratified that you have consented to allow us an opportunity to thoroughly present what we consider to be the mechanical defects and the unworkable features of H. R. 6772. I have worked for months to secure this opportunity and I want you to believe me when I say that seeking an opportunity for hearings before you men who must assume the responsibility of prescribing regulations that will affect the marketing of the grain from 6½ million farms in the United States is no idle gesture on our part.

We have been in deadly earnest in our endeavor to secure these hearings because we have realized that you would not willingly assume a responsibility of this magnitude without consultation with those who have spent their lives in administering the technical details of the trade. Men who will follow me are going to present to you the knowledge which they have acquired largely in the school of hard knocks over a lifetime of experience in the grain trade. Their recommendations to you are going to be valuable and I assure you that they will not be selfish.

The prosperity of the farmer and the productiveness of his fields are their prosperity and represent the measure of success in their business.

They will ask you to consider that the grain trade as such shall not be rendered uneconomic and inefficient before some other well-thought-out plan shall have been proposed as its successor. They will ask you further to consider the fact that several hundred thousand people depend for their livelihood and their bread and butter upon the functioning of the grade trade as it is today.

Their desire is to have features of this bill considered by our experts to be unworkable and uneconomic reconstructed so as to meet not only the demands of public policy and public safety but also the requirements of the smooth, even flow of grain from the harvest fields to the tables of the consumers so that the work of this committee may be looked upon as a constructive piece of legislation rather than as destructive of the very public interest which you and we are charged with the responsibility of safeguarding.

It has been my duty, and I might say, privilege, to have been the one who in season and out of season urged this opportunity to lay before you Senators of the United States these considerations.

I now desire to present Mr. C. D. Sturtevant, who, as chairman of the grain committee on national affairs, will make a brief statement and then in turn present to you the technical witnesses on the subject matter.

Senator MURPHY. We thank you, Mr. Boylan.

Mr. Sturtevant, please state your name, business, and address.

STATEMENT OF C. D. STURTEVANT, CHAIRMAN OF THE GRAIN COMMITTEE ON NATIONAL AFFAIRS, CHICAGO, ILL.

Mr. STURTEVANT. My name is C. D. Sturtevant and I am president of Bartlett, Frazier Co., Chicago, engaged in all branches of the grain business. I am chairman of the grain committee on national affairs, which includes in its membership all of the exchanges licensed to do business under the Grain Futures Act and many other exchanges dealing wholly in cash grain.

In order that the committee may be informed of the position of the grain trade with reference to the proposed legislation, I desire to state that we believe further regulatory measures, such as H. R. 6772, are, under existing conditions, unnecessary and undesirable.

The grain exchanges, in cooperation with the Grain Futures Administration, and as a logical evolution in line with good business practice, have during the past years built up regulatory machinery within the exchanges themselves which, in our opinion, does and will accomplish the purposes stated in this bill effectively and efficiently. Our industry has an enviable record of accomplishment along these lines during the past few years. While there were many failures and insolvencies in other industries, the grain industry, by reason of the efficient functioning of the futures trading system, went through the period of the depression up to the present time with a minimum of dislocations.

The percentage of losses to the public during this period suffered through the grain trade is so small as compared to the percentage

of losses through other industries that there is no fair basis of comparison. Operators of terminal elevators, mills, cooperatives, and country elevators, and others dealing in grain went through the period of depression and declining values without inventory losses, provided they took full advantage of the opportunity to hedge their commitments in futures.

This cooperation on the part of the exchanges with the Grain Futures Administration has been honest and sincere and with a profound appreciation on the part of the trade of our obligations to the public.

We, therefore, appear before you as an industry that has, with the help and the cooperation of the Administration, already set up the machinery to accomplish the purposes stated in this bill. This machinery is functioning today. Our business-conduct committees with their staffs of auditors are continually and consistently examining, checking, and auditing the statements and the books of members of the exchanges with two ends in view:

(1) To see that members dealing with the public maintain themselves at all times ot only in a solvent but in a liquid financial position; and

(2) To be sure that existing margin rules, enacted for the purpose of regulating speculation, are enforced to the fullest degree.

The Grain Futures Administration tells us that the language of the original act is defective in certain sections, as evidenced by recent court decisions, and that there are other certain minor defects in the act which should be cured. If the present bill were intended merely to cure these defects we would not be appearing before you. There have, however, been added in this bill new sections entirely outside the scope of the defects referred to above. Four of these provisions we cannot under any circumstances accept in principle, and these sections are as follows:

(1) Regulation of speculation by means of administrative limitations upon the amount of grain which a speculator may buy or sell during any one day or the amount that any speculator may own.

(2) The delegation of practically unlimited power to the Secretary of Agriculture, through rules and regulations to be promulgated as he sees fit.

(3) The effort to put into effect a complete licensing system for the grain trade under the guise of registration.

(4) The effort to obtain for the big federated cooperative organizations what we believe to be monopolistic special privileges over the small cooperatives and the regular grain trade.

There are certain other sections of the bill upon which we have been conferring at length with the Grain Futures Administration. We believe it is possible that these other provisions may be so reworded as to put them in more practical form and that if Congress decides that regulatory legislation of this character is necessary at this time these provisions should be written into the bill in the form in which our witnesses will present them. We have considered these provisions solely upon this basis.

We again reaffirm our position that no further regulatory legislation is necessary at this time, in view of the record of the accomplishments of the trade in self-regulation during the past few years, but if Congress decides to pass a bill, then we believe our suggestions and recommendations, made from the standpoint of practical knowledge and the understanding that we shall have to operate our businesses under these regulations, would be more workable than the provisions in the bill.

We are therefore here opposing in principle:

(1) Any legislation which seeks to regulate speculation by legal limitations on the amount of grain futures that may be bought and sold.

(2) Any legislation which delegates unlimited power to any administrative agency of the Government to regulate our business.

(3) Any legislation which includes in its provisions the licensing or registration of the trade.

(4) Any legislation which grants to cooperatives the right to pay rebates to their customers.

Gentlemen, our witnesses are going to appear before you as experts. They are going to confine their testimony to the points we are presenting. We would like to have the privilege of presenting each point separately and distinctly and having the evidence of our witnesses confined to that point.

Senator NORRIS. I would like to ask you this question: I suppose it is conceded on all sides, is it not, that the condition found by the court in the decision in the Cutten case ought to be remedied?

Mr. STURTEVANT. Yes, sir.

Senator NORRIS. Do you think you have remedied it now?

Mr. STURTEVANT. The provisions of this bill do remedy that and we have no objection to that. You are referring to the technical wording of the bill?

Senator NORRIS. You stated once or twice in your testimony that no legislation was necessary. What I am trying to get at is, how would you regulate that if we do not legislate on it? Are you able to do that?

Mr. STURTEVANT. Yes, sir; we are here to show that we not only can but that we are doing it today.

Senator NORRIS. How serious was that defect? I have heard it described a good many times. Sometimes as very serious and sometimes not so much. I would like to have your judgment about it. The Court found that the defendant in the case, as I understand it, was guilty of practices that were reprehensible, and all that, but it had no way under the law to punish him for it. One of the objects, as I understand, of this bill is to be able to punish that kind of conduct.

Mr. STURTEVANT. As you know, Senator, the point was that the language of the bill did not cover past transactions. This bill remedies that and that is one of the mechanical defects in the bill, and I say that if that were the only thing in the bill, we would not be here.

Senator NORBIS. Yes; but I am wondering if the difficulty the court pointed out could be remedied without legislation?

Mr. STURTEVANT. Not the technical defect to which you refer. We are content that that technical correction should be incorporated in the bill. But we do think that we are remedying that general condition today. Yes; we think we are remedying it today.

Senator MCGILL. How are you remedying it?

Mr. STURTEVANT. Through the operation of our business conduct committee and through control of the margin.

Senator McGill. What is the business conduct committee?

Mr. Sturtevant. It is a committee set up within the exchange with almost unlimited powers. As a matter of fact, whenever the Grain Futures Administration advises us that there is a situation that is getting out of hand, we take care of it.

Senator McGill. Who appoints that committee?

Mr. Sturtevant. The board of trade.

Senator Pope. Suppose some trader does what Cutten did and you found it out, what would you do about it?

Mr. Sturtevant. We would call him up for discipline.

Senator Pope. How would you discipline him?

Mr. Sturtevant. Under our rules, we could expel him or suspend him. Our theory of the way to regulate those practices is to make them unprofitable.

Senator Pope. If he is able to follow them and make a lot of money, as he evidently did, he is perfectly willing to be disciplined and can take a trip for a year or two.

Mr. Sturtevant. I want to make it clear to the committee all through these proceedings that conditions today under our present Government are not comparable with conditions at that time.

Senator Pope. On page seven of the bill, section 4 (b), there is a provision which prohibits outright in general language cheating and defrauding and bucketing and deceiving. You would have no objection to that?

Mr. Sturtevant. No, sir; none whatever.

Mr. Pope. Now, on page nine, section 4 (c) prohibits certain practices such as cross trades and accommodation trades and privileges. Do you object to that?

Mr. Sturtevant. In principle, no; we have one suggestion to make which the Grain Futures Administration agrees should be in there.

Senator Schwellenbach. As I understand it, you have given your business conduct committee, you say, almost unlimited power to handle these transactions?

Mr. Sturtevant. Yes, sir.

Senator Schwellenbach. In other words, the board of trade has delegated to a committee the power to handle any situation which may arise?

Mr. Sturtevant. Yes, sir. I would like to say for the record that one requisite for membership on the committee is that the members of the committee shall not undertake any speculative transactions for themselves either directly or indirectly.

Senator Schwellenbach. So long as the board of trade has delegated unlimited authority to one of its committees, how can you object consistently in your second objection to this bill on the ground that the Congress delegates certain authority with certain limitations to the Secretary of Agriculture?

Mr. Sturtevant. We think we can do a better job.

Senator Schwellenbach. Your objection then is not on the basis of delegation of authority, because you do it yourself?

Mr. Sturtevant. It depends upon to whom the authority is delegated.

Senator Schwellenbach. You think it is all right for the board of trade to give unlimited authority to one of its committees, but when Congress tries to give a limited authority, setting down rules and regulations under which he shall act, to the Secretary of Agriculture, then that is improper?

Mr. Sturtevant. Yes, sir.

Senator Pope. You are familiar with the operations of Mr. Howell, are you not?

Mr. Sturtevant. I am not very familiar with him.

Senator Pope. And are you familiar with the complaints made against him?

Mr. Sturtevant. No, sir; I am not. I was not in Chicago at that time.

Senator Pope. A complaint has been filed against him before the Commission which is now pending. Do you know of the operations of Mr. Simon Wexler?

Mr. Sturtevant. No, sir.

Senator Pope. You don't know about his operations?

Mr. Sturtevant. No, sir.

Senator Capper. Mr. Sturtevant, just how far did your business conduct committee go in checking up Mr. Cutten in his program about which there has been so much criticism?

Mr. Sturtevant. I again bring up the point that I want to emphasize: The business conduct committee was not in existence at the time. It is a recent development.

Senator Capper. Was anything done at all to head off speculators of the Cutten type?

Mr. Sturtevant. We haven't had any since this business conduct committee has been in existence. We are sure we can handle it now.

Senator Norris. When was this business conduct committee set up?

Mr. Sturtevant. The business conduct committee was set up in 1924, I am informed, so I will have to change my statement. It was not functioning, however, as it is at the present time.

Senator Pope. Was Mr. Cutten ever denied the rights of the market after the complaint was filed against him?

Mr. Sturtevant. I don't know.

Senator McGill. How long would you say the business conduct committee has been functioning as it is at the present time?

Mr. Sturtevant. Since 1933.

Senator McGill. You stated you have certain suggested amendments to this bill. Have you those in writing?

Mr. Sturtevant. Yes, sir. I would like to have the privilege of presenting those with each witness as he testifies on a particular subject.

Senator Murphy. Very well. We thank you, Mr. Sturtevant.

Mr. Sturtevant. Before you summon the next witness, I would like to say to the committee that his testimony will be directed definitely and particularly to that section of the bill to which Mr. Smith was testifying, and we ask the committee to eliminate from the bill section 4 (a), beginning on line 13, page 4, all of page 5, all of page 6, and on page 7 down through line 18. We have no quarrel with the objects stated in the section. We believe we have a better method of accomplishing that purpose, and Mr. Harris will endeavor to demonstrate that to the committee.

Senator Murphy. Mr. Harris, please state your name and residence and occupation.

STATEMENT OF SIEBEL C. HARRIS, VICE PRESIDENT, CHICAGO BOARD OF TRADE, CHICAGO, ILL.

Mr. HARRIS. My name is Siebel C. Harris, I am vice president of the Chicago Board of Trade and a resident of Chicago.

Mr. Chairman and gentlemen, I wish to address my remarks to section 4 (a) of the bill, having to do with fixing of trading limits both on speculative lines and spreads or straddles, with the purpose of convincing you that the passage of this legislation in its present form would accomplish far more harm than good, although we have no quarrel whatever with the objectives set forth in the bill and are very much in sympathy with those objectives. We have no quarrel with the desire of the Grain Futures Administration to accomplish those purposes, nor with the desire of the committee and the Congress to accomplish those purposes. Our viewpoint is one as to what is actually accomplished both in the way of harm and good by the writing of the legislation in its present form.

I do not wish to read the entire section, as you are trying to conserve time and we are, but I should like to read only part of section 4 (a), providing that—

"Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market which may be done by any person as the Commission finds is necessary to diminish, eliminate, or prevent such burden. Nothing in this section shall be construed to prohibit the Commission from fixing different trading limits for different commodities, markets, futures, or delivery months, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs (a) and (b) of this section, or from exempting transactions commonly known to the trade as "spreads" or "straddles" or from fixing trading limits applying to such transactions different from trading limits fixed for other transactions.

You will observe that the bill proposes to give the power to a commission consisting of three Cabinet officers to establish limits beyond which persons may not go in trading, with certain definite rights to make distinction with respect to different kinds of trades, that is, the amounts that may be open in a particular delivery, a certain amount in one month, a different amount in another month, one amount in one market and a different amount in another market, all of which we feel would create a great confusion in the minds of traders.

It has already been pointed out to some extent that the economic functioning of this market depends upon the ability of merchandisers and processors to hedge their product without an undue cost. That in effect means that anything which tends to limit substantially the ability of a hedger to buy or sell his hedge inevitably is going to cost more to either the producer or the consumer. That is based upon the theory that at the present time these handlers, millers, exporters, and elevator men are operating on the smallest margin of profit for any commodity in modern industry, and that is substantiated, I believe, by studies of the Federal Trade Commission and by well authenticated facts. That is the reason for excuse for the existence

of the futures market in its present form, the ability to cut down the cost between the producer and the consumer, and that in turn is based upon the efficient functioning of the market.

It is all very well to say that under a proper administration of this bill there would be no undue burden upon the market and that it is not the present intent to impose administrative restrictions that would cause such an increased cost. Perhaps that is true, but there are changes in administration. One administration may handle this in a way where it is very reasonably done, where there is no burden, and another may come along and handle it in an entirely different manner, but we have had many instances in recent years where powers were conferred without the current intention of utilizing those powers fully. The Farm Board bill, for example, is one, and yet pressures developed from certain interested groups, conditions developed which forced the usage of those powers and the mere fact that the power exists is a threat to the man who enters the market and who feels that he does not know what regulations are going to govern his actions either before or after he has made his commitment.

For example, at the present time, we have had a severe drought in the Southwest. Suppose your administrative regulations until recently had permitted a man to own 2,000,000 bushels of wheat, let us say. Suppose he enters the market in good faith on that assumption, and then let us assume that due to some occurrence a new administrative order is issued that a man may not buy or sell more than 500,000 bushels during any one trading day. Perhaps the man has entered the market on the theory that dry weather is going to advance the price. Suppose we run into a spell of rainy weather instead of dry weather and the man who has bought wheat feels that to protect himself, he must extricate himself from that situation. If an administrative provision has been issued which says in effect that he cannot get out of his commitment, let us say, for 4 days' time, then he is locked into a situation.

Again, I say, there may be no intention to make such administrative provisions, but any honest commission man must tell his customer that that is the law, that it can't be done, and there again you have the situation where the trader will say, "Well, in that event, the chance is too great, I can't afford to take that chance."

It is true that so far as the current position is concerned, any order issued would not be retroactive to the amount that he could hold, but an intervening order could come from the Commission which would greatly limit his ability to get himself out of a situation in which he was already placed in the market. In other words, he is operating under a law where the rules governing trading may be changed on short notice and he has no assurance that limits once fixed will remain steady.

Senator FRAZIER. Doesn't the board of trade often times change its rules on short notice?

Mr. HARRIS. They do not change any rules that I know of, Senator Frazier.

Senator FRAZIER. They have that authority; haven't they?

Mr. HARRIS. They have no authority to establish a definite quantity at the present time. They do change the rules from time to time, but they do not establish a rule on a man as to what he may trade.

I would like to proceed, if I may, to the point covering the other section in the bill as to the amount a man may trade in a day's time.

Senator POPE. There is a provision in the bill providing for full hearing by the Commission before any such limit is fixed or change made.

Mr. HARRIS. There is a provision providing for a hearing, yes; but that doesn't tell a man what is going to happen to his position in the interim.

Senator CAPPER. I take it that your position all hangs on this point, that you want the board of trade to make all the rules and regulations governing the grain trade rather than an impartial agency of the Government that will function in the interests of all parties interested?

Mr. HARRIS. I would like to proceed to that point, Senator, if I may. I have that included in my subjects and would like to proceed to that, if I may do so.

Senator MURPHY. Proceed.

Mr. HARRIS. I would like to point out to you another feature which could easily be extremely deceptive to the maintenance of an efficient market, a broad market, and that is subparagraph 2 of section 4 (a) which provides that—

> The Commission shall, in such order, fix a reasonable time (not to exceed ten days) after the order's promulgation; after which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such order or with respect to such commodity.

You will observe that this grants the power to fix the limit of trading during any one business day. I would like to take just a moment to explain to you that in this market there is a great body of traders known as the pit traders or pit scalpers who do not take any substantial position, either long of wheat or short of wheat, but operate in there to provide a broad liquid market at all times. They are willing to buy wheat at the bid price or sell wheat at the sellers' price, the two being one-eighth of a cent apart. They are the ones who make it possible for a miller or exporter to come in with an order to buy or sell wheat and sell that at a very slight concession in price and at a very low cost to this hedger.

Here is the practical difficulty in this section: I am in sympathy with the purpose and intent of it to this degree, that if the transfer of a large long position to a short position or a short position to a long position might create a little temprary disturbance there which could be quickly rectified, there might conceivably be the theoretical argument that that is not a perfect functioning of the machinery, that perhaps it creates a slight distortion or slight fluctuation which is absorbed within 24 hours and has no permanent effect. But in order to correct that situation, you propose to put in here a limitation which would have this paralyzing effect on the market. These men who are trading constantly, buying and selling, without affecting the price, without taking a position long or short except for a few seconds or a minute at the most, to get themselves in and out, these men under such a provision as you have here in a broad market, when they are most needed because theirs is the largest volume of merchandising operations, at that particular time would reach their limit of trading early in the session, with any limitation which we can conceve of as being probable, on a day's permissive buying and selling. When they have reached that limit, they must then retire from the picture and stop operations for the entire day, so that from then on you have a situation in which these men are no longer existent as a cushion, providing a cushion in the market; they are driven from the market.

Then what happens? The cost to the hedger in getting in and out on his merchandising operation immediately becomes excessive, because there is nobody in there to give him insurance service in offsetting an order. So, in the attempt to remedy a rare occurrence which may happen once in months and create a 24-hour fluctuation which is quickly rectified, in order to remedy that situation you stand in danger of paralyzing the proper functioning of your market in an active period of time by the elimination of the important pit trader.

What does that do? That means that your big hedger, finding that he had to pay a half a cent to remove a hedge during the last 2 hours of the session is going to say, "I am already operating on the very lowest margin of cost that I can function on",—that is your miller, your exporter, your hedger, your elevator man, and they are inevitably going to pass that cost along either to the producer or to the consumer because they are already down to a minimum margin of profit on operations.

I say that in order to prevent a rare occurrence of that kind, you are establishing an increased cost to the producer or to the consumer that is not warranted.

I should now like to present to you the view of the exchanges as to the proper manner in which trading may be controlled and supervised with the sincere intent of eliminating abuses, and at the same time, preserving all those elements of the machinery which we conceive to be in the public interest. Over a period of years the exchanges have been building up its administrative machinery through business conduct committees. We admit they have not always functioned to the greatest advantage. There is a period of evolution going on in all lines of business. There has been an increasing conception of their duties and responsibilities to the public and a sincere attempt to conform their practices in every way to the public interest. I don't know of any business that has succeeded in doing that except by going through a period of evolution which takes a certain amount of time. I submit that this committee on the board of trade has during recent years done everything in its power to cooperate with those who are charged with the administration of the act.

I would like to call your attention to the fact that at every meeting of the business conduct committee a representative of the Grain Futures Administration attends and advises with the committee in all of its operations. I should also like to state as a fact that the committee has made it its business in recent years to inquire constantly from this representative as to whether any condition exists that requires particular attention. This is especially true whenever

they approach a delivery period and there is any possible situation existing which might create an unreasonable price fluctuation or a distortion of values. The exchange has greatly strengthened its audit system. It has added to the personnel of its conduct committee only recently. It is our firm conviction that with the conduct committee working in close cooperation with the Grain Futures Administration none of the abuses of the character referred to here will reoccur. It is our firm belief that rules may be formulated by cooperative action, agreements between the conduct committee and the Grain Futures Administration, which will have greater flexibility and which will not exercise damaging effects on the machinery.

It is all very well for you gentlemen to say, if the board of trade can regulate its business, why can't we delegate to an administrative body here the right to do it? You can, you have that legal right, but you are charged with the responsibility of maintaining a marketing machinery that is functioning efficiently today, and our judgment as to the type of cooperative action that will perform that is worth something. We are not dogmatic about this, but we have had some experience, we do know something about the reactions of speculative traders. We do know that they are more inclined to trust a cooperative action that comes as a result of trade conduct committee working with Grain Futures Administration than they are with an arbitrary power delegated to a commission to fixed limits.

We are interested in securing an action that will get results. We believe that that can be done better by cooperative effort with the conduct committee than in the form of this bill.

Senator NORRIS. What regulation do you have to prevent a member of the conduct committee from indulging in these practices? Suppose the committee itself indulged in these practices that you are condemning?

Mr. HARRIS. Our members of the committee must agree to have no interests in any trades for their own account when they serve as members of the committee.

Senator NORRIS. Then serving on that committee interferes with their business, and would you not have some difficulty in getting members to serve on that committee?

Mr. HARRIS. No; Senator Norris, we have no difficulty in that because there are many people in the trade who never have any such interest at any time, men whose business is such that they have no occasion or desire to have any interest whatsoever in the market.

Senator NORRIS. I realize and can see the object of your objection to regulation by the Government, because it will change things probably to some extent, but I would think that same objection would apply to your committee.

Mr. HARRIS. It does not apply to our committee because of the character of the personnel. Furthermore, my suggestion is not that the board in itself be arbitrary and refuse to consult with the conduct committee. I believe it is perfectly feasible for the conduct committee to have working arrangements at all times with the Grain Futures Administration as to what are proper lines. I firmly believe there will be no difficulty in working out such arrangements.

Senator POPE. That could be done under this law?

Mr. HARRIS. Pardon me, sir, it could not be done under this law, because the power exists for this arbitrary action by the Commission, and that power would be known to exist to every trader in the market. I am trying to reach a practical solution of this instead of a theoretical, legal solution, and I reiterate again that the responsibility for maintaining this machinery rests upon you as well as upon us, that we want to work out something that will not bring down complaint and criticism and I believe that our suggestion for this is a more workable one than the wording embodied in the bill.

I further propose, to strengthen that by additional action of a type that has been commented on here, and proposed as an additional protective measure, the substitution for section 4 (a) of the following amendment: "Trading limits: Amend H. R. 6772 by striking out section 4 (a) on page 4, line 13, up to and including the end thereof on page 7, line 18, and substituting in lieu thereof a new section, following section to be inserted immediately following line 7, page 19, which shall read as follows:

(7) Require by rule or regulation its members to demand and receive from all customers, whether members or nonmembers, reasonable and adequate minimum margins to protect all contracts for the purchase or sale of any commodity for future delivery upon such contract market and by rule or regulation to define reasonable, adequate margins: *Provided, however,* That reasonable and adequate margins on aggregate open trades in grain (other than hedging or spreading trades) in excess of two million bushels of any one grain in any one contract market shall be deemed to be not less than 20 per centum of the market price of such grain on the open trades in excess of such two million bushels, when lines of such aggregate length shall have been reported by the Grain Futures Administration to the Business Conduct Committee of such contract market.

And also insert immediately following line 11 on page 11, the following section:

(3) Such person shall demand and receive from all customers reasonable and adequate margins required by such contract market to protect all contracts for the purchase or sale of any commodity for future delivery upon such contract market.

It is our belief that the twofold control embodied in the above suggestion, namely, a close cooperative working arrangement between the Grain Futures and the business conduct committee and this marginal control on large lines, would retain all the elements of value now existing in the marketing machinery and at the same time would eliminate the very real and pressing danger of market paralysis which might readily result if the provisions contained in section 4 (a) were enforced. We wish to impress on you with the greatest solemnity that the duty and responsibility for maintaining this machinery which will operate in the best interests of the producer is one which should not lightly be assumed. We submit to you that many years of experience qualify us to testify with a degree of expert knowledge which cannot safely be ignored. We make this statement not with any selfish desire to perpetuate any condition that may be against the public interest, but with the profound feeling that we also have a duty and that we would be delinquent in performing our obligations if we did not point out with the greatest emphasis at our command the facts as we conceive them.

Senator NORRIS. What action would the board of trade have to take in order to do away with this committee entirely, for instance, or to modify or change its duties?

Mr. HARRIS. Senator Norris, there is a technical answer to that question: The membership of the board of trade by a majority vote could do away with the business conduct committee, but the conception of public policy growing in all exchanges is such that it is inconceivable that any institution impressed with the public interest as ours is would take any such action, and the answer is that it would not take you longer than the very next session of Congress to correct it.

Senator NORRIS. That may be true, but still I think there would be an objection in the statute which would do what your proposed amendment does. It provides for certain things to be done by a committee which it designates by name. All of that is outside of any statute. It depends for its existence upon the continuance of the action of the body in creating the committee. This committee is not set up by law. Maybe I don't make myself clear.

Mr. HARRIS. Yes, you make yourself clear to me. I think the answer to that is that it could be extremely simple. I will agree with your technical objection that that other committee was confirmed officially or set up by the code. Inasmuch as the N. R. A. is no longer in existence, the section of the N. R. A. which made it mandatory to have a business conduct committee, then you are technically correct in your statement that there is no legislative provision now for a business conduct committee. That in itself could be rectified in a few moments' time, and I am sure that that part would be agreed to by the Grain Futures Administration, as it is my belief that they are thoroughly desirous of maintaining the existence of business conduct committees. If I am wrong in that statement, doubtless the witnesses from the Department will correct that when they appear.

Senator CAPPER. Mr. Harris, to what extent does the seller, producer, keeping in mind that this is a sellers' and producers' market just as much as it is a buyers' market, to what extent does your board of trade business conduct committee give a hearing with a view to having cooperation between sellers and buyers in the conduct of that market?

Mr. HARRIS. I am very sure that if any representative of a seller or producer wished to express his views before the business conduct committee at any time, that he would not only be permitted to do so but would be encouraged to do so.

Senator CAPPER. What would be the objection to having representation on that business conduct committee, a representation of the producers?

Mr. HARRIS. Aside from the fact that it is confined to members, which, of course, could be rectified by a rule, I know of no objection to it whatever, and in line with the policy of the exchange at all times to attempt to follow along the lines of public policy and of endeavoring to improve its machinery, I do not know of any reason at this time why there would be objection to it any more than there is objection to the Grain Futures people sitting in with us. We don't object to that, Senator Capper. We encourage it, because when distortions occur and when we are criticized, we don't want to take all the responsibility. We have been trying to do a job. We want somebody else to take part of it, and we are glad to have them work with us, and I think they will testify to the fact that they work with us.

Senator NORRIS. I am wondering if the question of the delegation of authority would not arise there, whether Congress could, if it wanted to, delegate to this committee authority to do things and to regulate things, punish nonobedience, and so forth?

Mr. HARRIS. To which committee?

Senator NORRIS. Any committee.

Senator MCGILL. The business conduct committee.

Mr. HARRIS. My point is that the business conduct committee will by cooperation with the Grain Futures Department see that abuses are corrected and that the history of the last 2 years shows that we will do so.

Senator NORRIS. I understand that, and I am not finding fault with it at all, but someone gets into court and says, "That is a delegation of authority which Congress had no constitutional right to make".

Mr. HARRIS. I think somebody could get into court on it quicker under the present one.

Senator NORRIS. They will get into court on anything we pass, there is no doubt about that, but I would like to surround whatever action we take with the possibility that when they get through with the injunctions that are bound to come, we might win in the end.

Mr. HARRIS. You have that surrounded by a reconvening of Congress every 12 months or less. That is quite sufficient. Moral suasion is a much stronger factor in regulating our conduct.

Senator NORRIS. No, we wouldn't get much relief if we were going to set up something that would be set aside every Congress.

Mr. HARRIS. We are interested in staying in business over 12 months. We have been in it a long time, and we believe we can do our job. We are not trying to evade, we are trying to offer something constructive.

Senator NORRIS. I am not charging you with that.

Mr. HARRIS. I am trying to make my point that it would be suicidal and asinine on our part to conduct any such agreement under any such terms as you have suggested.

Senator NORRIS. Suppose somebody outside of your committee would concoct some scheme by which he could get in court. A good lawyer could do that, and he would say, "This is an unconstitutional provision of the law."

Mr. HARRIS. We have ways and means of handling our own members, and they are not strictly by law. You have such ways and means down here. Some General, for example, speaks out of turn and they put him back in his place without resorting to legal action necessarily, but you get what you want. We have similiar situations. We have a great many powers of moral suasion that we can use on people. There is not any possible way in which you can assure constitutional support or, we will say, legal enforcement of anything which you enact, because they are all subject to legal attack. This whole thing is a practical rather than a legal problem, and it must be handled on practical rather than legal lines. When we come to those situations, if we can't remedy them by cooperative action be-

tween the Grain Futures and the Grain Trade, we will devise with them some means of handling them with the least possible damage to the machinery, and that is a commitment.

Senator CAPPER. If you are going to curtail the powers and activities of an impartial Federal agency that is trying to function along that line, it sems to me the only thing left is to make that business-conduct committee of yours or some agency of the board of trade a body that is made up in part at least of producers as well as buyers.

Senator NORRIS. I am thinking, Senator Capper, in addition to that, I am a little afraid at first blush that the suggested amendment of the witness would provide for the setting up of a committee by Congress not appointed by any Government official, not appointed by anyone having authority, but delegating all that authority, in this case to the board of trade, isn't that unconstitutional as an improper delegation of authority, when we give to that committee authority to punish for violation of its regulations and so forth?

Senator CAPPER. As I see it, the board of trade has taken or claims all authority to conduct this great market in Chicago. They resent any impartial supervision by an impartial agency of the Government and say, "This is a great game and we will make the rules under which it will be conducted."

Mr. HARRIS. I would like to correct that impression. In the first place, the board of trade does not resent anything. The board of trade has an opinion, a judgment, based upon what it believes to be an expert knowledge of the business.

Senator NORRIS. Mr. Harris, in my assumption, I am not assuming that you are going to do anything wrong. I am taking your own assumptions.

Mr. HARRIS. Yes, sir.

Senator NORRIS. I am raising the interrogation point and asking whether we have the constitutional power to do it?

Mr. HARRIS. That is reasonable and logical. The answer to it is, we are not doing as Senator Capper is suggesting, trying to make all the rules of the game, ignoring the interests of the producers or the opinions of outsiders. We are trying to make those rules flexible, we propose to work them out in constant cooperation with an arm of the Government, which also is closely allied with this industry and which has responsibilities, too, for its administration, and very grave ones, and we are trying to do that in a way which will not be under too rigid legislative enactment, but in a way which will work. I submit that as long as we have the threat over our heads—that is not the reason we do it—but as long as we have it, we are going to work that out along the lines that will work best. If including a producer on the personnel of the conduct committee assists in doing that, I personally feel there would be no objection to such an action.

Senator SCHWELLENBACH. With reference to this proposal to limit the requirements of margins, do you feel that that is a desirable thing, that conditions would be better if you have that requirement than they are now?

Mr. HARRIS. I feel that it is a secondary or additional control on large lines to impose an amount of margins which would discourage that overtrading. I feel, more than that, that the real way to correct it is by a close working agreement between the Grain Futures Administration and the exchanges from time to time as to what constitutes excessive speculation and price distortion. I think that is the practical way to work it out. I believe the other is an additional safeguard.

Senator SCHWELLENBACH. Talking a minute about marginal requirements, do you feel that that is a desirable thing to do, that the situation would be better if you had those margin requirements than the way it is now?

Mr. HARRIS. I think it is a reserve bulwark in the way of a further penalty on excessive speculation, if you impose one above lines which are felt to be excessive. I don't think that it compares in actual practical working value with the right kind of harmonious relations between the conduct committee and the Grain Futures Department.

Senator SCHWELLENBACH. The Board has had the power at all times, has it not, to make these margin requirements?

Mr. HARRIS. That is correct.

Senator SCHWELLENBACH. If it is desirable and you recognize that it is something that should be done and included in this law, why hasn't the Board itself made these margin requirements under its power?

Mr. HARRIS. We did so under the code, and the state of the market has been such since termination of that, that there has been no occasion to invoke any such action. We have had very quiet, very orderly markets which required no such control, and while the Board has established certain margins, they have not had any occasion to invoke additional margins, because we have had no market condition which was in any sense excessive speculation or unreasonable price fluctuation at any time.

Senator POPE. Isn't it really your objection to this law that the Grain Futures Commission would act arbitrarily or unreasonably and not in the interest of general trading?

Mr. HARRIS. This Grain Futures Commission? That is not my objection to it. My objection to it is that any trader, knowing that it could be utilized in that way, would object to entering the market with those rules established. You say this Grain Futures Administration. That is anybody's guess. I say, no, probably not, but the fear is there. It is not my objection to what this Grain Futures Administration will do but it is the traders' objection to what they think any commission may do. After all, the trader reads the law.

Senator POPE. If you felt sure the Commission would act reasonably, not arbitrarily, you would have no objection to it?

Mr. HARRIS. I felt assured that the Farm Board, when the bill was passed, would never invoke its stabilization feature because we were told by the highest people in the administration that it never would. I felt sure the R. F. C. was an emergency body created for a 2-year existence and yet it is still in existence. It is not what I think about it, but it is what people who trade in the market know can be done. There is a psychological point to it. My point is that we can work better, preserve this machinery better, by the kind of action I have outlined than you can by that kind of legislation, and we are here to report back to you every 12 months if we don't do it. We will be right back here on the carpet again next time.

Senator MURPHY. Mr. Harris, I note the statement in the proposed amendment that the margin "requirement on lines in excess of two million bushels of any one grain in any one contract market

shall be deemed to be not less than 20 per centum of the market price of such grain." What margins are now exacted from traders?

Mr. HARRIS. At the present time the margins on speculative trades in Chicago are 150 percent of the clearing-house requirements. In Minneapolis it is somewhat higher, and in Minneapolis they have the super-margin on lines of 2,000,000 bushels. It was left on after the code expired.

Senator SCHWELLENBACH. What is the 150?

Mr. HARRIS. At the present time it is 6 cents a bushel. We have a quiet, orderly market, and it can be increased at any time.

Senator MURPHY. Thank you, Mr. Harris.

The committee will stand in recess until 2 o'clock this afternoon.

(Whereupon, at 12 noon, the committee recessed until 2 p. m. this day.)

AFTER RECESS

The committee reassembled at 2 p. m., pursuant to recess.

Senator MURPHY (presiding). The committee will come to order. Are you prepared to present your next witness, Mr. Sturtevant?

Mr. STURTEVANT. Yes, Mr. Chairman; I would like to have you hear Mr. Theis, of Kansas City.

Senator MURPHY. Very well. State your name and business connection, Mr. Theis, and whom you represent.

STATEMENT OF FRANK A. THEIS, PRESIDENT OF THE SIMONDS-SHIELDS-LONSDALE GRAIN CO., KANSAS CITY, MO.

Mr. THEIS. My name is Frank A. Theis, president of the Simonds-Shields-Lonsdale Grain Co., Kansas City, Mo. My company is one of the oldest grain concerns in the Kansas City market, and has been actively engaged in the grain business in that market for the past 51 years. We are in the business of storing, handling, and merchandising of wheat and feeding grains, both for domestic distribution and for export. We operate two large terminal elevators in Kansas City with a total capacity of 7,000,000 bushels; one house in Kansas and the other in the State of Missouri. We are primarily merchandisers of cash grain, although we do handle a very small commission business for the account of our regular milling and outside elevator customers. We do not make a practice of the general solicitation of futures business, nor do we operate any private wire system. In addition to having several memberships in the Kansas City Board of Trade, my company is a member of the Chicago Board of Trade, the St. Louis Merchants Exchange, the Omaha Grain Exchange, the Hutchinson Board of Trade, the Wichita Board of Trade, and the New York Produce Exchange. Up until 3 years ago we participated for many years in a very large volume of export business to Europe, the majority of our shipments being made through the ports of Galveston, Houston, New Orleans, and Mobile.

Personally, I have been in the grain business for 23 years. My early experience was in connection with buying cash grain at outside terminal markets and from the country shipping points. I was president of the Kansas City Board of Trade in 1931, have served on practically all of the committees of that exchange, and at this time am

vice president and director of the grain clearing company that handles the clearing of futures trades for the members of our market.

The Kansas City Board of Trade is one link in the chain constituting the most broadly competitive, highly technical, and economic systems of marketing which has been developed for the handling of any commodity any place throughout the world. It is one of 15 of the so-called contract markets licensed to do futures business under the Grain Futures Act, and second only in volume of futures trades to the Chicago Board of Trade. The Kansas City market serves as a price-basing point for the six Southwest winter wheat States, which area produces normally from one-third to one-half of the total wheat production of the entire United States. It is the largest primary winter wheat market in point of actual carlot receipts. It is the third largest flour milling center in the entire country. The total grain storage and elevator capacity of Kansas City is approximately 60,000,000 bushels, and the members of our grain market operate physical properties in Kansas City with an investment of approximately $50,000,000.

In addition to large elevator capacity in outside markets in our territory, such as Salina; Hutchinson; Wichita; Enid, Okla.; Amarillo, Tex.; Fort Worth, and Gulf export terminals, there are approximately 5,600 country elevators located in these six States. The total wheat production in the six Southwestern States has been as high as 497,000,000 bushels. The Kansas City market has received annually as much as 125,000,000 bushels of wheat in carlots, and a total of all grains of as much as 153,000,00 bushels. Therefore, it is apparent that Kansas City is a very important factor in the grain-marketing machinery of the United States.

While essentially our market is what is known as a cash grain market, still the volume of futures trading is also highly important. The 10-year average, 1925–34, of the volume of wheat futures trading in our market is 647,000,000 bushels; the total of all grains, 844,000,000 bushels. Our volume of wheat trading in futures is, however, approximately only one-tenth of the volume of trading in the Chicago market. There is a very close economic relationship between the values as registered in the various grain markets throughout the United States, and particularly is this true between the Kansas City and the Chicago market. It must be recognized that the Chicago market is the hub of the interrelated marketing machinery, and it is the most important market in connection with futures trading and is therefore known as the large speculative and hedging market. It is absolutely essential and necessary that, in order to conduct the cash grain business of the Southwest, the broad, open, competitive system of futures trading as conducted in Chicago be utilized for hedging and merchandising of the cash crops in our territory, for the reason that the volume of futures in the Kansas City market is not large enough in itself to carry the load of hedging pressure. It must be understood that the bulk of the wheat receipts in the Kansas City market arrive during the harvest season and that, on the average, 50 percent of the total wheat receipts of the market are received during the months of July and August.

I am appearing before you representing the Kansas City Board of Trade as well as expressing my personal opinions and my own

firm's experience. I should like to confine my remarks at this time to the proposed section 4 (a) of the Grain Futures Act as contained in section 5 of H. R. 6772, which you have under consideration. The Kansas City Board of Trade desires to definitely protest against this proposed section, which would place restriction on the volume of speculative and spreading lines, for the reason that we consider it entirely unnecessary and the wrong method of curbing or regulating so-called excessive speculation. For the past 2½ or 3 years our market has made a conscientious and successful attempt to govern excessive speculation through the method of margin control on all lines of futures business, instead of limitation on speculative lines. We feel extremely satisfied with the results of this method of control, definitely established in the rules of our board of trade, and we know of no instances during the application of this tried and true method of any so-called abuses or manipulation in our futures market. The business conduct committee of our exchange has by definite rule the power to adopt and prescribe such regulations as it may deem necessary to carry out the purposes of the rules governing margins on futures trades, and we have established by rule definite minimum margins which each member must require on all types of future business. As stated before, we have found these rules up to date to be entirely adequate. However, the board of directors of our exchange has the further authority, whenever they find market conditions require, to increase, but not decrease, by regulation the minimum requirements prescribed in this rule.

We protest most vigorously against the passage of the proposed section 4 (a) (1) and (2) as being entirely experimental and theoretical in its purpose and, in our opinion, extremely dangerous and damagng to our entire marketing system. One of the most objectionable features of this proposed section is the fact that it would be within the power of the Commission, set up under the Grain Futures Act, to proclaim and fix, from time to time, the limits on the amounts of trading in futures, both in the volume any one person could own speculatively and in the amount that could be traded in any one business day. The fact that various and different limits could be established under this section, if enacted into law, would bring about such uncertainty in the minds of traders that the highly economic usefulness of the futures market as an insurance would, in our opinion, be placed in jeopardy.

As a cash grain handler and buyer of large volumes of wheat and feeding grains, I would consider such limitation on futures trading as comparable to a possible law that would limit the volume of actual carlot cash grain that any one person could buy in any one day. As an example of what I mean, it is no uncommon thing for the Kansas City market to receive for a considerable length of time as much as 1,000 cars of wheat daily. If there was a law restricting any one buyer to the purchase of, say, only 100 cars, which would be approximately 160,000 bushels in any one day, it would destroy the highly competitive system of sales being made to the highest bidder. The buyer who was willing to pay, say, $1 a bushel for 500 cars would be required to limit his purchase to only 100 cars at $1. Perhaps the next buyer would be willing to pay only 98 cents, and after his 100-car limit was reached the third buyer would be willing to pay only 96 cents, and so on down to where it becomes quite apparent that such limitation would be an unbearable restriction on our system of cash trading, thus definitely reducing the price which the farmer would receive. In our opinion, the application of this same principle to futures trading will bring about the same result.

I realize full well that in the type of business in which my firm is engaged, the buying and selling of cash grain, and using the futures market exclusively for the purpose of hedging or insuring our purchases and sales of cash grain, that we are exempt as to limitation of volume of futures trades under this proposed legislation. In subsection (3) of section 4 (a) it is definitely stated that no limitations of lines fixed by the Commission shall apply to transactions which shall be shown to be bona-fide hedging transactions. But what I am personally extremely concerned with is the fact that any further restrictions on the futures market, and particularly this suggested limitation of speculative lines which will further reduce the volume of futures trading, would make it a tremendous problem for me as a cash grain handler to find a buyer for my hedges which I am accumulating cash grain in my elevators and equally difficult to find a seller of my hedges when I am merchandising wheat and feeding grains throughout the calendar year.

I stated in the fore part of my testimony that my firm for many years was engaged in the business of exporting wheat and other grains to foreign markets. With particular reference to wheat, it would be no uncommon thing at this time of the year, under normal conditions, for my firm to have sold several million bushels of wheat for forward shipment to the United Kingdom and continental ports for shipment during July, August, September and October. This amount would be multiplied many times by the numerous exporters throughout the United States. The well-established method of conducting this business in former years was the sale of cash grain to the foreign buyer before actual harvest, against which it was necessary, in order to protect my firm as an exporter from price fluctuations, to make purchases of equivalent amounts of futures, both July and September. This method of conducting export business would place a very large immediate demand for futures and later on in the season the exporter would ultimately convert these futures into cash grain to fulfill his export contracts.

While the exporter in buying this large volume of futures was hedging or insuring himself against price advance, yet some one must carry that risk and would be compelled to sell the exporter these futures. Under our marketing system, a large group of individuals and a widespread interest assumes that risk, which is commonly known as a short sale. These short sellers of futures are highly important under normal conditions to provide a broad and liquid market which would enable those of us in the merchandising business of cash grain to conduct our business in an economic manner. It would be inconceivable to visualize any one exporter or group of exporters selling millions of bushels of grain abroad without some protection to insure themselves against loss and operate on the small margin of profit which the highly competitive nature of the business requires. Further, we know from experience, that we must sell the foreign buyer of wheat when he is actually in the market, or he purchases his requirements from some other exporting country. Otherwise, when we should decide to sell our wheat later, we would find

him entirely out of the market. Therefore, Mr. Chairman, I say it is most important that a large volume and wide breadth be permitted in our futures markets, for cash grain handlers to function in our regular operations.

Export business is not possible at the present time, as you gentlemen well know, but a more vivid illustration of what I am trying to emphasize has been brought to my attention just recently with reference to the domestic forward demand for wheat and flour. My office has just informed me that a large commercial bakery in Kansas City is in the market for 50,000 barrels of flour for July-August delivery. That is the equivalent to approximately 250,000 bushels of wheat. The mill or group of mills that sells that baker that flour in the normal and prudent course of business is required to go into the futures market and buy the equivalent of 250,000 bushels of July futures, for the reason that new crop wheat is not available as yet, as is well known. Some may say that that baker is a speculator, but nevertheless he has the courage and fortitude to anticipate his forward requirements by purchasing at this time flour to take care of his business for July and August. The mill on the other hand, by covering its sale by the purchase of futures, is in a hedged or insured position, and is therefore not interested in the trend of the market, either upwards or downwards, until he can replace his cash wheat to fulfill his order and sell out his futures at the same time.

Someone, however, must take the short side of that baker's long position, and that is where the speculator, or the short-seller, of July futures steps into the picture. Call him a speculator if you will, but he is pitting his judgment against the baker's, and it is his idea as a speculator that the market is going to decline and thus bring about a profit to himself. Whether or not this proves to be true, we are not interested as merchandisers of the farmers' grain.

Multiply this one illustration many, many times and you will realize that even at this very moment the short seller is performing an economic merchandising function by making it possible for our mills and grain dealers to carry on their day-to-day operations in the normal course of business. I am most sincere, Mr. Chairman, when I say that I am terribly alarmed over the likelihood that any such limitation as proposed in this section of the proposed legislation will only react as a restriction on the milling trade, the cash grain merchandising trade of our territory, and result in a lower price to the producer.

In my own case, it is not an uncommon thing for my company to purchase large amounts of wheat during the season of harvesting movement, both during the daily market sessions and on overnight bids which we place throughout the entire southwestern territory, to come to Kansas City and to move to the Gulf ports for export. Under this highly efficient and economic futures system which the trade has developed through its ingenuity and technical understanding it is possible for me as a buyer of cash wheat to base my bids on the then-existing quotation of the Kansas City and Chicago futures, for the reason that by years of experience I am aware that under our present system I can hedge or insure my cash purchases by the sale of futures at the then-existent actual quotation. This permits me to buy my grain on a very narrow margin of profit and perform a highly economic service to the producer.

If that volume of futures business and that breadth of trade which is necessary to permit me to hedge my cash purchases is disturbed and I find upon entering the market to make my hedge sale that it is necessary for me to offer the market down one-fourth or one-half a cent before I can place my hedge, then I am compelled by my experience on my next bid to the country to simply widen out my margin of profit to take care of that additional risk. Conversely, later on in the season when I have accumulated a large amount of wheat in our elevators at Kansas City and I am quoting this wheat to mills throughout the entire United States, should I get an acceptance from a mill in Philadelphia for 100,000 bushels of a certain type of wheat I know under our present system that I can buy back my future at the then existing market.

Any further restrictions on the volume of trade such as proposed in this section of the bill, in my opinion, would make it difficult for me to buy back my future when I make my sale of milling wheat at the current quotation, and I fear I might find myself in a position of bidding up the futures market one-fourth to one-half a cent in order to complete my transaction. Thus if such a condition did come about, I would be compelled to anticipate it by widening out my margin of profit when I disposed of the cash wheat at a later date. May I impress upon you very strongly the well-known fact to those of us in the industry that it is utterly impossible to find an immediate buyer for all the cash grain that accumulates during the period of a harvest movement during July and Auust. We must be dependent, just as is the producer, upon the speculator or investor in futures to carry that load until later on in the season when we are able to meet the deferred demand for cash milling or export wheat, at which time we make our cash sales and buy back our futures.

Senator MURPHY. Will you stop at that point, please? I should like to ask this: You say it is difficult when the wheat is coming on the market to get enough buyers of that cash wheat. Isn't it possible just at that time, because of that very condition, to sell that market short in very large volume and further depress the price, taking advantage of the absence of any one's ability to buy this wheat in the volume offered? Isn't it possible then and there to pounce upon that market with short sales and depress the price?

Mr. THEIS. I have heard that said many, many times, Senator Murphy, as a criticism.

Senator MURPHY. That is not an answer to the question.

Mr. THEIS. I say that, of course, it is possible to make sales of futures, short sales of futures, at the time that hedging sales are going into the market, yes, sir; but it has been our experience over a period of years, and I think it can be borne out by statistical information and wheat studies of Stanford University and others, that the actual price that exists by our futures system over some 50 years will show as good a relationship during the harvest period, July to, say, October, which also includes the spring wheat movement, as is true later on in the spring season. I could substantiate that, I think, as I say by actual study of this very intricate system of futures that not only from an export standpoint but from a domestic standpoint that keeps this relationship and interest in line. There are just as many people who are buying futures against this

man who is selling short, and hedge sales who are projecting into the future, in May or in the spring months, to carry the load of the actual producers production until the physical demand for wheat develops.

Senator MURPHY. We grant that there is a buyer for every sale. It is not true that there is a buyer for each sale at a maintained price; and it may be true and seemingly is that the price can be depressed by the greater volume of offerings than purchases.

Mr. THEIS. I have never seen that to be exactly the case, Senator. What I am saying in my testimony here is that I am fearful that if that breadth of trade that is in the market—that liquidity, as we express it, technically—if that is limited by any definite line or an unusual line that might be placed from time to time, the limitation that I am speaking of, I am fearful that that very thing will bring about this condition where I as a hedger will not be able to hedge my grain at the market price that is quoted at the time.

Senator POPE. Wouldn't that depend upon what the limit was?

Mr. THEIS. Indeed it would, and that is just the point. It is the uncertainty of what that limit is going to be, in my opinion.

Senator POPE. Suppose it were, say, 500,000 bushels in a day; wouldn't that be a sufficient limit? You referred to 160,000 bushels a while ago, I believe, 10 carloads. Wouldn't a limit, say, of 500,000 bushels per day be a limit that would allow the latitude that you have referred to to take place?

Mr. THEIS. Not in my opinion, Senator.

Senator MURPHY. In your own business experience, I understood you to say—or was I mistaken in my understanding—you handle as much as 640,000,000 bushels of cash wheat?

Mr. THEIS. Six hundred and forty million bushels of futures, the volume of turn-over in the Kansas City market over a 10-year average.

Senator MURPHY. That is a 10-year average?

Mr. THEIS. Yes.

Senator MURPHY. Have you been at all times within the limitation of 500,000 in your future tradings as against your cash wheat?

Mr. THEIS. There has been at no time a limitation of 500,000. That is what is worrying me, I am afraid there might be.

Senator MURPHY. What was the *Cutten case* based on?

Senator POPE. The *Cutten case* was based on a limitation of 500,000 per day, which is a regulation of the grain futures commission on the Chicago market, as I understand it.

Senator MURPHY. Will you rest your testimony just a moment until we get that straight?

Mr. FRED H. CLUTTON. Mr. Chairman, I think the Senator is mistaken. There is no limitation of line in the Futures Act today. There is an amount which if a trader exceeds he should report to the grain futures administration. A man may buy any quantity or sell any quantity, but it is only a question of his making the report.

Senator POPE. He must report above the amount?

Mr. CLUTTON. Reporting it. The crime is not in buying, the crime is in not reporting.

Senator MURPHY. Thank you very much. That refreshes my recollection about it, and I remember it now. You may proceed, Mr. Theis.

Mr. THEIS. There is one point further that I would like to bring out, Senator Murphy, and that is the fact that there is a limitation also on spreads as provided for in subsection 3 of this bill. Now, the spreading operation to us is treated exactly as a hedge operation, for the reason that it operates in a spread neither net long nor net short in any amount. The trader is evenly balanced. He may be long in one future in one market and short another future in that same market, or long in one future, we will say, in Chicago and short in Kansas City, or vice versa.

Senator MURPHY. Does the spread arise from a transaction where he has no net position one way or the other?

Mr. THEIS. That is correct, sir. There is no net position in what we speak of as a "long and short" position. Now there is a possibility—and again I say it is the fear of what might happen there—there is a possibility under this section that a limitation might be placed on the volume of that spread operation. We have dealt in the last few years by this system of margins that has been spoken of here by several of the witnesses, we have dealt the same with the spread as we do a hedge. In other words, the same limitation is required of a spreader as of a hedger. We consider them in the same category. We recognize the necessity of their operation in the market. I can say to you very frankly that at the present time were it not for the operation of spreaders in the Kansas City market, moving between Kansas City and Chicago, and perhaps to Minneapolis and back again, we would not have sufficient volume from day to day operations to actually sell 50,000 bushels of the farmers' wheat in that market. It is something that is very highly technical, I appreciate, but it is something that we consider most economic in our market.

Senator POPE. Is that term used as between different futures in the same market?

Mr. THEIS. Yes, sir.

Senator POPE. What is the difference between that and a straddle? Are they about the same?

Mr. THEIS. I am not familiar with straddles, except that it is used in the bill.

Senator MURPHY. It is used in political platforms especially. [Laughter.]

Senator POPE. Well, it ought to be in the bill for the same reason. [Laughter.]

Senator MURPHY. I can't understand a man who has been a candidate for office not knowing what a straddle is. [Laughter.]

Mr. THEIS. We state very definitely, then, Mr. Chairman, that in most cases of the operation of our buying and selling of hedges we must find speculators or future traders who are willing to take the risk of both buying and selling and preserving a broad, liquid market at all seasons of the year; therefore, personally, on behalf of my own firm and representing the membership of the Kansas City Board of Trade, I most respectfully urge that your committee give full consideration to our urgent and sincere request that you eliminate this proposed section from the bill now under consideration and permit our markets to continue to function under their proved efficient rules and regulations.

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Senator POPE. Do you object to other portions of the bill?

Mr. THEIS. I am not testifying on that at all. As a matter of fact, there are some things in the bill that I certainly do object to.

Mr. STURTEVANT. Might I have the privilege of asking this witness a question or two?

Senator MURPHY. Yes.

Mr. STURTEVANT. Will you amplify, for the benefit of the committee, your statement in connection with the use of the short seller in your export business, in answer to Senator Murphy's inquiry? In your testimony you showed how the short seller came into your export transactions.

Mr. THEIS. I can amplify it to this extent, that if it were not for the short seller or some one who is willing to take that short sale against my long purchases of futures, as I stated, at this time of the year, against forward shipments of actual, physical cash wheat, I could not possibly make the sale, unless I was willing to take the risk, and if I happened to be correct in my guess I might be in business a while, but if I was wrong I would be out of business in a big hurry.

Mr. STURTEVANT. The next question is, the bill exempts you, as a hedger, from the operation of these restrictions?

Mr. THEIS. Correct.

Mr. STURTEVANT. And you have touched on this point, but just why do you want speculators to be able to trade in lines of over 2,000,000 bushels to take the other side of your hedges?

Mr. THEIS. We find it is absolutely necessary to have enough buying power in the market in order to carry the load of millions of bushels of cash wheat that is coming. The same is true in the Northwest. For instance, in our market it is no uncommon thing for us to have as much as 50 or 55 million bushels of wheat in store against which hedges are sold. The Kansas City market can't carry all that load. They can only carry, perhaps, a tenth of it. The Chicago market, the Minneapolis market, and others must equally carry their proportion of that actual hedge. Now, if we didn't have that I don't see how we could physically handle our crops. As a matter of fact, in answer to your question, in order to make it possible to finance we must be fully hedged at all times or our bankers would not advance us any money against cash wheat.

Senator MURPHY. Who buys your hedge?

Mr. THEIS. The speculator. There is no use making any bones about it. The speculator, in my personal opinion, is the best friend the farmer ever had.

Senator MURPHY. Thank pou very much, Mr. Theis. We will now hear Mr. Grimes, vice president of the Cargill Elevator Co., Minneapolis, Minn.

STATEMENT OF E. J. GRIMES, VICE PRESIDENT, CARGILL ELEVATOR CO., MINNEAPOLIS, MINN.

Mr. GRIMES. Mr. Chairman and members of the committee, I represent the Minneapolis Chamber of Commerce. This grain exchange is one of the largest cash grain markets of the country. This exchange and the Duluth Board of Trade are the core of the extensive grain-marketing system in the Northwest. Through the facilities of these exchanges farmers in the closely contiguous States are furnished daily cash markets for their grain and seeds. Farmers in a very much larger area to the west and south very often find these highly developed competitive grain markets of Minneapolis and Duluth the best outlets for their grain.

The terminal elevator storage capacity in Minneapolis exceeds 90,000,000 bushels, probably the largest concentration of grain elevator space at any one point in the world. This large capacity is owned or operated by a large number of independent warehousemen and merchants, each operating his own elevator with his own corps of specialists in milling wheat, malting barley, feed grains, and seeds. The large grain cooperative operates a terminal elevator at Minneapolis. Most of these terminal elevators are public warehouses and are heavily bonded by the State of Minnesota. All of these terminal elevators are members of the Minneapolis Chamber of Commerce.

Then there is the flour-milling industry of Minneapolis which forms a very important segment of the flour-milling capacity of the Nation. For over a half century the name Minneapolis has been a symbol for good flour and Minneapolis millers have advertised the virtues of flour made from Northwestern Hard Spring wheat around the world. Linseed crushing is an important industry in Minneapolis, providing a steady and ready demand for Northwest flaxseed. These millers and crushers are members of the chamber of commerce.

All of these industries are daily buyers of the grain and seed receipts that are offered in the Minneapolis market. Supplementing this large group of Minneapolis merchants who are continuously in the market for supplies there are flour mills, feed plants, and malting plants located in Minnesota, Wisconsin, and Illinois, many of whom have their own member representatives on the Minneapolis exchange to purchase supplies for their industries. Altogether, a very highly developed and keenly competitive buying demand for cash grain and seeds focuses in this market for each day's offerings, and the prices registered there each day reflect the free and openly competitive buying of any and all who care to bid for the offerings in the market. So much for the demand side of the market.

On the supply side are the country elevator dealers represented on the exchange by member cash grain commission houses and the line elevator companies by their salesmen. The cash grain commission houses assiduously devote themselves to giving their country clients the fullest measure of market service. The competition for country accounts is exceedingly keen and a commission house to survive must be organized and equipped to render superlative service. Because of the rivalry for accounts this service is extraordinarily complete in the Northwest. Not only do these commission houses act as selling representatives for the country and are always striving to secure top market prices for their clients but continuous service in the way of information and advice on market conditions is furnished the country shipper by mail and telephone, inspections on all cars of grain received are carefully checked, railroad claims handled, and most important of all, funds with which to finance the cash buying of grain in the country are furnished at rates of interest generally lower than the country elevator company would be required to pay elsewhere. This financing of country accounts has been a practice in the Northwest for a great many years and often the cash grain

commission house has been the only source from which farmer-owned and independent country elevators could obtain funds to adequately finance the buying of grain from farmers. Funds have even been advanced by commission firms to buy or build country elevators for their clients, mostly cooperatives. All of these commission houses are bonded by the State for the protection of country shippers.

All of these flour millers, grain and seed merchants, and the commission houses as representatives of country clients, from long-standing necessitous customs and practice, use the futures market for insurance against price variations in the commodities they handle. It is generally conceded that it is good business practice to avoid speculative risks by hedging operations. In fact, a grain dealer that does not hedge in the futures market is looked upon as extraordinarily reckless.

Now, that is the background—a highly developed and keenly competitive cash grain gathering and distributing system built around futures trading as its heart and lifeblood. Through this central mechanism passes practically all grain that moves to market. It is the reservoir where surpluses are caught up and conserved for future needs. By providing security to dealers and handlers it justifies the grant of abundant credit facilities, and thereby gives the farmer a continuous market where he can sell for cash.

Speculation is a very necessary adjunct of a futures market. It is an important link in the chain of functions. If this link is weakened by irrational or impractical restraint or regulation futures trading itself will collapse, and without this agency of insurance the cash grain marketing system would have to be completely reorganized on an entirely changed basis of operation, for I know of no way that strictly hedging transactions can be offset or balanced. Where you have a short period of agricultural harvest and heavy producer marketings in the months immediately following harvest, and the burden of distribution spread throughout the entire year, and provision to be made for the additional burden of crop carry-overs, someone must carry and finance this undistributed load until it moves into consumptive channels.

Without the insurance protection afforded by use of futures trading, the margin for handling by dealers would have to be very materially widened, as dealers would not only find credit difficult to obtain in its current comparative abundance but would be obliged to make provision in their handling margin for the increased hazard of doing business.

Statistics over a long period of years show 70 percent of the wheat crop of this country passes out of farmers' hands by November. In addition we have had carry-overs from previous crops that have ranged from 100 to nearly 400 million bushels of wheat. This fact would seem to afford an opportunity for speculators or grain dealers to buy the crop at a low price, hold it and sell it later in a higher market. But amazingly enough, that is not the way it has worked out under the present system.

Numerous studies and investigations have been made by official commissions and fact-finding organizations, and it is an established fact that over a period of years the farmer selling his grain at or near harvesttime fares quite as well as the farmer who holds and sells later in the crop year.

Large independent pools and even governments have from time to time tried their hand in so-called stabilization operations and invariably have incurred heavy losses. Past experience seems to record it as a settled truth that Government or large-scale pool speculation, as a substitute for widely distributed public speculation, accomplishes no permanent benefit for agriculture and too often it has injured the very ones it intended to help. Observe what has happened during this crop year in the Northwest.

Right at the peak of the crop movement Minneapolis grain futures reached their high for the crop. In October wheat futures sold well above $1.20. Early in April this year they sold well under $1. Is it not a fair question to ask, "Why concern ourselves about the speculators that may have bought wheat futures at high prices in October?" They came into the market voluntarily and furnished their own capital to finance their trades. If it was speculative buying that produced in last October a price that now appears to have been generously high, the wheat farmers of the Northwest surely benefited from the speculative interest in the market.

And that brings me to what I think is the crux of this problem of control of speculation in grains. I would like to have you believe speculation has economic virtue, and if it has virtue, that it should not be driven out of U. E. grain markets and lost to Liverpool or Winnipeg or to other commodities markets. Or, still worse, if because of drastic statutory restraint or prohibition in the major grain exchanges, roundabout and disorderly speculation is given encouragement outside of the grain exchanges.

This bill proposes to control excessive speculation by making illegal speculation in grain by any one person in excess of a fixed maximum amount to be determined from time to time by a commission in Washington. Different maximum limits may be fixed for different grains and different markets. Provision is also made for a limitation on daily trading by any one person in any one day, and the commission has the power to change this limit from time to time.

Then, under the bill spreading operations are subject to control as to maximum amounts by this commission. I regard some of these regulations as not only mainly unnecessary but in many cases excessively arbitrary and so indefinite and uncertain as to how the power to regulate will be used in Washington, that the bill may produce a condition where the economic value of futures trading will be weakened, when I think all agree it ought to be strengthened.

I very much fear that placing such complete and arbitrary authority over trading operations in Washington can have disastrous consequences. It may easily spread distrust and timidity amongst the trading public and amongst hedgers, who in contemplation of the Government invoking its authority to restrict trading at any time will decide it is too hazardous an undertaking to engage in. The severe penalties provided for what might be minor infractions of the act may deter many grain exchange members from accepting orders in futures trading.

It seems so unnecessary to hazard the effectiveness and the general utility of the present smooth-functioning futures trading markets with such control as is contemplated in this bill, when it appears that speculation now is under effective and healthy control under the rules and regulations of the grain exchange. In my opinion, the key

to control of speculation in grain into managed channels is in the rule requirement now in force on all large exchanges that members must collect and receive from all persons making speculative trades certain minimum margins.

This matter of control of speculation was threshed out exhaustively here in Washington in 1933 and 1934 when the grain exchange code was formulated. The code was carefully drawn and was very specific in the general principle of affording protection of price insurance to handlers and processors of cash grain, and at the same time giving encouragement and protection to wholesome and manageable speculation.

No one will claim the code was a perfect document, but it did give a very satisfactory record of achievement while it was in existence. One very definite fact was established and that was that margin requirements did exercise healthy control over speculation, and all exchanges have continued these margin requirement provisions in some form similar to the theory of control adopted in the code. The rules of all exchanges where futures are dealt in now require members to obtain from speculative traders margin deposits of cash or its equavalent on open trades.

I believe the solution of the problem of control of large traders' operations in a higher scale of margins on trades in excess of 2,000,000 bushels. The exchanges have volunteered to make this margin 20 percent which in theory, and in practice during the code, is sure to operate as a check on overtrading by large traders.

Senator POPE. Do these different exchanges have the same amount of margins that have to be put up?

Mr. GRIMES. No, sir.

Senator POPE. Yours is a different amount?

Mr. GRIMES. Yes, sir.

Senator POPE. And at Kansas City?

Mr. GRIMES. Yes, sir. Minneapolis still has margin requirements as spelled out in the grain exchange code.

Senator SCHWELLENBACH. Why, Mr. Grimes, when you had a 20-percent margin requirement under the code, and you say they are willing now voluntarily to have a 20-percent margin requirement, why since the abandonment of the code up to the present time has it dropped down to 6 cents a bushel?

Mr. GRIMES. I think Mr. Harris pointed out this morning that in Chicago they thought there was no necessity, with the narrow market and very light speculative trade, to have that excessive—that margin on the larger trades. Minneapolis, however, has left that same margin requirement on.

Senator POPE. Do you have more trading on the Minneapolis Exchange than they do in Chicago?

Mr. GRIMES. No, sir.

Senator POPE. You have less future trading?

Mr. GRIMES. Yes, sir.

Senator POPE. And still you have retained that 20-percent margin requirement?

Mr. GRIMES. Yes, sir. We decided that we would make no change in the code margin requirements until after this matter had been settled here by legislation, if it was to be settled, because we thoroughly believe up there that the medium of control, that is, the best medium of control, is by margins rather than by this arbitrary exercise of power down here to limit the size of lines.

Senator POPE. Under the code did you have the same margin requirements as Chicago?

Mr. GRIMES. Yes, sir.

Senator POPE. And Kansas City?

Mr. GRIMES. Yes, sir. Just a word about fixation of limits on spreading operations. Not many of the cash grain handlers and processors are interested in the limitation of speculative lines from the standpoint of it prohibiting them from speculating in a long or short position on large commitments, for very few go long or short in the market.

I believe it is their general practice to keep as near even as possible with their total open purchases always approximately offsetting their total open sales.

They use the futures market not only to make a short hedge against a long position in cash grain, but also to make a long hedge against a short position of cash grain or product.

Senator POPE. Mr. Grimes, have you read the provision relating to margins in this bill, as to their keeping the margin deposit separate from the funds of the Commission?

Mr. GRIMES. Yes, sir.

Senator POPE. Are you in favor of that provision in the law?

Mr. GRIMES. I think that that will be discussed by somebody who has made a special study of it, Senator. And I might add that the committee has discussed it very thoroughly and are ready to offer a suggestion of something that conforms in general principle with the idea but perhaps is more practical.

Senator POPE. And you are going along with the committee?

Mr. GRIMES. Yes, sir. These hedgers also find it necessary at times to use the futures market as a hedge when they have neither a long nor a short position in cash grain or products. In this case they may buy long the future of one month and sell short an equal amount of a future of a different month in the same market, or buy long a future in one market and sell short an equal amount of a future in a different market.

Their net position is even as the amount of long futures balance the amount of short futures. This is what is known as spreading. Spreading transactions are probably not as nonspeculative as strictly hedging operations, although hedging is not always entirely airtight protection and insurance as the cash grain that is hedged in futures may fluctuate in value in a comparatively minor degree different than the fluctuation of the futures hedge.

Spreading, however, is much less of a risk than a purely speculative position in the market when a major change in values is taking place as the general trend in the rise or fall of prices in all markets will be in the same direction, so that with a spread between markets the profit in a long position in one market is offset to large extent by the loss in the short position in the other market.

You may well ask, then, why do industries indulge in spreading operations and what good purpose in the market does it serve. The most important service performed by spreading operations, in my opinion, is that it quickly corrects or prevents maladjustment in commercial relationships between markets.

Minneapolis and Kansas City are large cash grain markets and Chicago is the principal speculative market. When the heavy movement of grain crops is on in the Southwest and Northwest and the great bulk of this grain is being marketed in Kansas City, Minneapolis, and Duluth, as is the case, these interior markets would soon be in a position where the absorptive power to receive the impact of heavy hedging sales at proper commercial relationships with Chicago would be exhausted and prices in the interior markets might descend to a discount position under Chicago seemingly not justified by conditions.

Senator POPE. Couldn't those spreads also be used, however, for making a difference in the market, a difference in the prices of two markets? They certainly can be used to bring up the price of the markets and make them uniform.

Mr. GRIMES. Yes.

Senator POPE. But couldn't they also be used to further spread those markets?

Mr. GRIMES. Those that spread are generally the industries or the terminal elevators, or market students who make a very close—make it their business to study commercial relationships between markets. So that if any one person or group of persons tried to throw maladjustments into these markets he would immediately have to pit his power against some one who probably felt equally as well qualified to say what the proper adjustments should be, and I think by permitting spreading you would at least arrive at what is a very valid commercial relationship between the markets. Without it I don't know where we would be. I think Minneapolis might descend to prices that would be either down to the freight difference under Chicago or very much out of proper adjustment and I think you would also find that from time to time you might even face the situation where you would have a very wide dislocation of stocks of wheat, where you might pull it through a market where it ordinarily would stop.

In other words, if Chicago was artificially high and Minneapolis unnaturally was low, it might be pulling the wheat through Minneapolis to Chicago, when ordinarily it should be needed in Minneapolis probably later on for the milling industry there. In other words, it is the very contradiction of proper and wholesome competition.

When spreading operations are permitted to have free play there are many cash grain handlers and other well-informed students of relationships between markets who are willing to buy one market and sell another market at a difference which, in their judgment, represents a valid commercial relationship. This spreading or arbitraging diminishes erratic fluctuation and promotes healthier stability in the less speculative market, and also undoubtedly tends to check speculative activity in any one market, as by spreading, the speculation is distributed to all markets.

Spreading is also of very great advantage to grain handlers and processors at times in another way. As I have said, these industries may find it desirable and sometimes necessary to put out a hedge position in distant months, and at the start there will be no purchase or sale of cash grain. For example, a milling company in Minneapolis or Kansas City might be satisfied it could operate its mill profitably if cash wheat was obtainable at a certain fixed relationship with the Chicago market. For the purpose of illustration, let it be said that this mill is willing to buy cash wheat in Minneapolis at 3 cents under Chicago this coming September. Although this is the month of April, September wheat is being traded in in both Minneapolis and Chicago. It is entirely possible that some time between now and next September Minneapolis September wheat may sell at 3 cents under Chicago and when and if it does that mill will commence to buy Minneapolis September wheat and sell Chicago September at that difference.

This spreading may take place months before the new crop of Northwest wheat is harvested and ready for market, but this milliner has assured himself of a supply of cash wheat for use during the next September at what he considers a satisfactory basis under Chicago. When the new crop wheat moves, he converts the long Minneapolis September wheat futures into cash wheat either by taking delivery in Minneapolis in September or by buying country run wheat and simultaneously selling out his long Minneapolis September future, leaving him in either case with a stock of cash wheat in Minneapolis hedged in Chicago.

In this particular operation the spreading operation makes provision for anticipatory requirements. This quite common and businesslike practice should not be interferred with as it is of important service to milling companies and to farmers and to markets, as it promotes healthier commercial relationships between markets and undoubtedly makes for wider distribution of flour milling capacity, whereby flour and millfeeds, useful to farmers, receive a wider and more economical distribution. Mr. Theodore Hammit of the Grain Futures Administration authored some excellent papers on this subject in 1934.

Just one more observation. It seems plain that the purpose and intent of this bill is to restrict and drastically regulate futures trading and, in so doing, many believe cause serious injury to the present grain marketing system.

One is forced to the conclusion that Congress believes the grain marketing system is delinquent or defective in its service ability to the producer and that it is monopolistic or noncompetitive as it functions, or else such a drastic measure would not be proposed at this time.

Perhaps it has not occurred to you, but if you will analyze grain marketing conditions during the past 2 years you will see that the charge that the grain marketing system has been inefficient or ineffective in its service to farmers, or that it has been monopolistic in its methods, has been completely disproved.

During the past 2 years the price structure on grains in this country available to American producers, created by the efficient functioning of all classifications of trade in this industry, has been so high that it has attracted to the United States grain of many kinds grown by farmers in foreign lands and this in spite of our high tariff duties on imports of grain. Corn, oats, rye, and flax have come in from Argentina, rye and barley from continental Europe and during this crop a large volume of wheat has come in from Canada over a 42-cent tariff wall.

So, we have the paradox of implied criticism of the marketing system on the one hand for alleged shortcomings and delinquencies and, on the other hand, a record of achievement during the past

2 years which seems to signify it has been perhaps too enterprising and efficient in the service rendered to the grain producers of this country.

The fate of the present marketing system rests pretty much in your hands. What may prove to be the first good grain crop in several years appears to be in prospect in the Northwest. If it comes through in good fashion, the commercial grain handling agencies should be given the greatest possible opportunity to function efficiently in order to insure to the producers broad and healthy markets. We have in this country the best marketing system in the world. Don't strangle it with unnecessary red tape.

Senator MURPHY. Do I understand that you assume full responsibility for these importations of grain?

Mr. GRIMES. Me? No, sir. [Laughter.]

Senator FRAZIER. You spoke of the price of wheat going down. What is the reason for wheat going down 20 or 30 cents a bushel in the last few months?

Mr. GRIMES. I presume it is due to a number of causes, although I would not attempt to try to tell you all of the reasons, Senator. Maybe it was too high last fall. We have had quite heavy imports from Canada. Maybe there have been economies in consumption or things of that nature. It is always easy at the start of a crop season to make prophecy as to what the market may do, but as you near the end of it you pretty well know what the facts are, and of course one can look back and see where he has been wrong, sometimes.

Senator FRAZIER. There is no question about the shortage of crop last year and low production of wheat in the country?

Mr. GRIMES. Yes, sir; that is a fact.

Senator FRAZIER. Now, about the imports? Does that have any effect, do you think, on the market.

Mr. GRIMES. Oh, yes; I think it has a tendency to level off the demand, but of course they have good effects, too, as far as wheat was concerned in the Northwest, because after the crop failures there was very little heavy wheat left in the Northwest country; so that in order to use the very light weight wheat in this crop it was quite necessary to find a suitable mix where heavy wheat could be mixed with this light weight wheat to make suitable flour.

Senator FRAZIER. You spoke about Chicago doing more speculating in wheat than they do in Minneapolis. Do you have the figures as to the amount of actual wheat handled in Minneapolis, compared with the actual wheat handled in Chicago?

Mr. GRIMES. No, sir; I have not them right here, but I think that—well, I haven't them with me. I can secure that for you at any time.

Senator HATCH. Mr. Grimes, isn't it true that cash wheat has been paying a premium, bringing a premium over the futures market for several months past?

Mr. GRIMES. It has in Minneapolis. That is, the high protein wheat in Minneapolis has brought as much as 25 to 27 cents per bushel over the future, that is, over the current future. So that cash wheat of good quality in Minneapolis last fall did sell at an excellent price, that is, an excellent price relative to what it has been selling at during the last several years.

Senator HATCH. It is also true that it sold substantially higher than the Chicago futures market?

Mr. GRIMES. Yes, sir.

Senator HATCH. I was just wondering what connection that had with your evident theory that the speculative market has been beneficial to the market when cash wheat has been selling at so much more than the futures.

Mr. GRIMES. Of course, in the Northwest, as Senator Frazier has said, we had a very small crop of wheat, and the Minneapolis mills had to adjust themselves to that situation, because they have their brands of flour that have been advertised for years, and they have a special demand for this flour ground from hard spring wheat, and the Minneapolis markets just naturally found the supply and demand level.

Senator HATCH. Well, today cash wheat is bringing substantially more than May option, the near option.

Mr. GRIMES. In Minneapolis, yes; I think it is. That is, there are some grades of it that are, and there are other grades, I believe, that are selling somewhat less.

Senator HATCH. Then is it not a fact that perhaps the futures market being so low is now actually holding down the price of cash wheat?

Mr. GRIMES. I don't think the futures market is holding down the price of cash wheat; in fact, I think that, as I have tried to say in this testimony, those industries, millers and grain men and country dealers, and everybody else, if they did not have the futures market in which to underwrite the insurance risk, their purchases would be probably very much less than they are, and their holdings, of course, would be very much less than they are carrying under present conditions, to the detriment of the price structure.

Senator POPE. Have you imported within the last few months wheat into this country?

Mr. GRIMES. Oh, yes. My company?

Senator POPE. Yes.

Mr. GRIMES. I would not be surprised that we have. We have a Buffalo plant, that is, a Buffalo elevator, and we may have imported some wheat through our company. I don't know for a certainty.

Senator POPE. Have you imported rye?

Mr. GRIMES. Yes.

Senator MURPHY. Is that the heavy grade of wheat you import?

Mr. GRIMES. Yes.

Senator MURPHY. That is due to the deficiency created by the crop failures in the last 2 years?

Mr. GRIMES. Yes.

Senator FRAZIER. Doesn't the price of your future wheat generally relate to the price of cash wheat?

Mr. GRIMES. It acts as a standard, as a barometer, and of course your cash wheat may sell at premiums or discounts over or under the future.

Senator FRAZIER. Well, your premium in Minneapolis undoubtedly has something to do with the imports from Canada, do they not?

Mr. GRIMES. Yes; probably, because it represented the price that millers must pay.

Senator FRAZIER. You are paying in premium over half of the duty.

Mr. GRIMES. Yes.

Senator MURPHY. And you have got to do that to supply this particular flour market?

Mr. GRIMES. Yes; and also to make use, perhaps, of the lighter qualities of wheat that otherwise probably could not be used by the millers, because they mix the lightweight with the heavyweight.

Senator FRAZIER. It has that advantage, but it has the disadvantage of keeping the market price down. There is no question about that in my mind.

Mr. GRIMES. Imports?

Senator FRAZIER. Yes.

Mr. GRIMES. Yes; perhaps.

Senator MURPHY. Just how would that operate? If, as you say, the importations are desired by the millers to manufacture a certain grade of flour and the importations are necessary for that particular purpose, do those importations depress the price of all wheat?

Mr. GRIMES. No. It probably has a tendency, however, to level off the price of all wheat. It may not depress it. It probably acts as a check to higher prices. It might do that. What I referred to was this: As Senator Frazier knows, much wheat in North Dakota this year tested only 40 to 45 pounds, very light-test weight wheat. It took 8 or 9 bushels of that wheat to make a barrel of flour, and at that time the processing tax was in effect, so that a barrel of flour ground from that wheat would cost considerably—a barrel of flour that was ground from that wheat, having to compete with flour from other sections, it was necessary that the miller buy this off-grade wheat sometimes on quite a low basis. So that, as I see it, it worked to the advanage finally of the farmer who produced it by working out so that he was able to mix it with the imported heavier wheat and thereby, of course, not force too low a price on the off-grade wheat.

Senator FRAZIER. I don't agree with you that it worked to the advantage of the farmer; it worked to the advantage of the miller. I think that is the best way to put it, because the price of the low-grade wheat went down instead of up.

Mr. GRIMES. No; it did not. As soon as they found out its qualities, and after laboratory and milling experience, that wheat did go into flour milling use and it has been used, I think, very extensively. Mr. Myrick, of the Pillsbury Flour Milling Co., will follow me on the stand, a miller from Minneapolis, and he will be much better qualified than I am to discuss that phase of the subject.

Senator HATCH. Just one other question about the difference in futures price and cash price. Ordinarily has it not been true throughout the years that cash grain sells under its discount on the Chicago futures market or Minneapolis?

Mr. GRIMES. You mean in Minneapolis?

Senator HATCH. Yes.

Mr. GRIMES. You mean cash grain always sells at a discount?

Senator HATCH. Usually.

Mr. GRIMES. Not always. It might sell at a discount under a future that is 6 months hence—it might sell in September at a discount under the next May future, but it very seldom sells at a discount under, say, the current September future.

Senator HATCH. Out in the country districts where wheat is being marketed, the cash price paid to producers has been in the past, as a rule, less than the futures market.

Senator FRAZIER. Especially in the fall of the year when they are selling wheat.

Senator HATCH. There is an allowance there for freight rate, usually the discount, is it not?

Mr. GRIMES. Yes. The freight rate, of course, would have to be taken into consideration in the buying difference or else these country elevator properties would be operated at a loss.

Senator HATCH. It is only in the past 2 years that that cash wheat out in the country has sold at an especially high premium over the futures market, isn't it?

Mr. GRIMES. Well, we have had premium wheat in Minneapolis for a good many years at times. That is, Minneapolis has the reputation of being a premium wheat market. That may be due to the good quality of the hard spring wheat for flour or to the enterprise of the Minneapolis millers or to other causes. I don't know. Nevertheless, Minneapolis has that reputation.

Senator MURPHY. Thank you very much, Mr. Grimes. We appreciate having had your testimony.

Mr. STURTEVANT. Mr. Chairman, these two witnesses have testified solely as to section 4 of the bill, and we have two more witnesses on the same subject whose statements, however, are very brief. In order to suit the convenience of counsel, whose appearance is urgently needed in other proceedings, we would like at this time to deviate from our program and present our second and third points and counsel's argument on them.

Senator MURPHY. On whom are you calling?

Mr. STURTEVANT. Mr. Kirkland, of Chicago.

STATEMENT OF WEYMOUTH KIRKLAND, REPRESENTING THE CHICAGO BOARD OF TRADE, CHICAGO, ILL.

Mr. KIRKLAND. My name is Weymouth Kirkland, Chicago, Ill. I am a member of the firm of Kirkland, Fleming, Green, Martin & Ellis. We represent the Chicago Board of Trade and we appear here for the other Grain Exchanges also.

Senator POPE. You are attorneys?

Mr. KIRKLAND. Yes. I want to discuss but briefly two or three provisions of this proposed act from a legal standpoint, not with the idea of arguing any law but just with the idea of leaving with you some suggestions concerning it that you may take into consideration before you pass on this act.

We believe, and it is our contention, that there are certain provisions in this act giving power to the Secretary of Agriculture which amounts to an unconstitutional delegation of legislative power, and to make my point clear I want to first call your attention to the power given to the Secretary in the Grain Futures Act to make certain rules and regulations. It is in paragraph B of section 5 of the Grain Futures Act, which gives the Secretary the power to direct,

not to make the board of trade, but to direct the board of trade or the grain exchanges to make certain rules and regulations, and if you will look at that provision you will find that it directs him, with the governing board thereof—it provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board or the members thereof, either in cash transactions consummated on or in a board of trade, or transactions for future delivery, when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or members of the board of trade, as the Secretary may direct.

There is something else to the section, but the reason that I read that to you is to call your attention to the fact that it does not give the Secretary of Agriculture any legislative power—that is, this provision in the Grain Futures Act—it gives him a standard by which he can determine what rules he can make under the authority given him by Congress, and no one contends that that particular provision delegated any legislative power to the Secretary, because within the four corners of that paragraph he knows just what he can do. It is very specific.

Senator POPE. You are making a distinction between delegating power to the Secretary of Agriculture and the Commission?

Mr. KIRKLAND. No, Senator; I will make my distinction plain now. I merely point out the power given to him in the Grain Futures Act, so as to make this point clear. In the present proposed act he is given power that we contend is a delegation of legislative power. First he is given power under section 4 (a), paragraph 1, to proclaim and fix limits on the amount of trading in futures, except bona fide hedging transactions.

Senator POPE. Where is that given? I thought that was given to the Commission. That power is given to the Commission.

Mr. KIRKLAND. That is given to the Commission. I beg pardon. The Commission may claim and fix limits; yes. I stand corrected. The Secretary is given power by order to provide for periods of delivery under the contracts for futures. The Secretary also by order may provide for periods of notice for delivery under contracts for futures. Now, those three things are not as much a delegation of legislative power as this last provision, which is section 10, paragraph 5, of the proposed amendment, at the top of page 26—

> to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this act.

First let me say to you that I don't think that adds to or subtracts anything from the act. The act is full of regulations and paragraphs telling brokers and commission men what they can and cannot do; so I doubt very much whether that adds anything to the act, but under that particular delegation of authority you can see that the Secretary is given broad powers to legislate.

Let me give you an illustration. These gentlemen were talking here this morning about the limitation of lines that any one man could carry in any markets—of grain or wheat or rye, and so forth.

Supposing the House and Senate decide, in their legislative capacity, that there should be no limitation of lines, that you don't think it is a good thing; immediately after the passage of this act, or as long as the act remains on the statute books in its present form, the Secretary could say: "In order to effectuate the provisions or to accomplish the purpose of this act I will promulgate a rule saying that the lines shall be 2,000,000", or 1,000,000, or anything he saw fit, and what I want to point out to you particularly is that when he makes the rule he is almost a court of last resort as to whether that rule is a valid one or not. In order to test the validity of any rule made by the Secretary of Agriculture, the broker or the commission man or the board of trade in the contract market has run the risk of violating the rule and then run the risk of whether the court, after the Secretary has decided that it is a valid rule, and having made it, he would undoubtedly decide it was a valid rule, the broker then runs the risk of whether or not the court will sustain him in his contention that the rule is invalid.

My contention is, Mr. Chairman and Senators, that that paragraph 5, together with the other delegations of authority—but the other is not so much so, but paragraph 5 amounts to an unconstitutional delegation of legislative power. Some one might answer: "They have added to it that he can only make such rules as are necessary to effectuate any of the provisions or to accomplish any of the purposes of the act."

I say that adds nothing to the act. That leaves the act just as broad as it was if it did not have those provisions in there, and what I would like to commend to your consideration is a couple of recent opinions of the Supreme Court of the United States that I know you are all familiar with: First, the opinion in the commonly called "Hot oil case", the *Pan-American case* v. *Ryan*, where a question of delegation of legislative power was considered by the Supreme Court, and that was followed by the commonly called "Chicken case", or the *Schechter case*.

Just briefly, and without attempting to take too much of your time, the Court—the section in the oil case was section 9 of the N. R. A. Act, which gave the President—Congress had given to the President the power to determine whether he would permit petroleum or the products of petroleum in an amount to come through interstate commerce in an amount in excess of what the different States had said was the proper amount that they would permit to go through.

The Supreme Court said that that was a delegation to the President to make a prohibitory law; it was up to him whether he would exercise the prohibition or whether he would not; that there was no standard in the act itself by which the President could determine—no rule of conduct for him, no standard given by which he could determine what his conduct should be, and they laid down the law, both in the *Pan-American* and in the *Schechter case*, to be about as follows—and I don't mean to say that Congress hasn't the right to delegate to administrative officers, to executive officers, the right to make rules; I don't mean to say that you haven't got a right to delegate to the Interstate Commerce Commission the right to determine reasonable rates, nor do I say that you haven't any right to delegate to the Communications Commission who they shall give waivling to, but you will find that in any case you can conceive of, if they have

been sustained, they come within the rule laid down in the *Pan-American* and in the *Schechter case*, and the rule was this: That Congress may delegate to executive or administrative officers the power to make subordinate rules within certain restrictions named or outlined in the act, or Congress may say to an administrative officer: "You must determine certain facts; then after determining those facts or determining that certain conditions exist, you may execute the act." You have many times, I take it—I know one—I have no doubt there are others—passed laws in which you said it would go into effect after the determination of a certain fact by the President of the United States, and after he had announced it, but you will find no case—and I say this without fear of contradiction—and I know there are a lot of statutes passed with similar language—the Stockyards and Packers Act has similar language to this section 5, but that particular part of the Stockyards and Packers Act has never been subjected to judicial determination, and I say without fear of contradiction that wherever you find these statutes submitted to the Supreme Court of the United States you will find that they have found, as they have upheld it, that there was some standard by which the executive or administrative officer could guide his conduct.

He was not given authority as broad as the bill itself, because that is what you gentlemen are here for, but he was given some standard or some criterion or some rule by which he could proceed, within which he could proceed, or he was told that he could determine certain facts and then proceed to use his discretion in the execution of the law.

Under this section 5, gentlemen, what is to prevent the Secretary of Agriculture from passing a rule which he might think would effectuate the provisions or accomplish the purposes of this act, and which I say to you might do either one or both of those things but which rule might affect Mr. Grimes' company or Mr. Harris' company in a matter in which they were doing purely intrastate business, and there is nothing in that section that says it has to be confined to interstate business of the broker or of the commission house or of the contract market, nor is there anything in that section that says he must confine himself in his rules and regulations in regulating business, say intrastate business that is a burden on interstate business.

Senator POPE. You are, of course, familiar with the case that upheld the constitutionality of the original act, in which they discussed that?

Mr. KIRKLAND. Yes, Senator; I think I am very familiar with it. I know it has caused me a lot of worry, if that is what you mean.

Senator POPE. And the discussion of the Court on that very point as to interstate and intrastate commerce relating to exchanges?

Mr. KIRKLAND. Yes. I don't mean to sit here—I intend to get to that in a moment—I don't mean to sit here, Senator, and say that just because a company in the State of Illinois is doing a purely intrastate business, the Congress of the United States might not be able to regulate it under the commerce clause. You and I, I think, are in accord on that, but in order to do so, the Congress of the United States must find, and the courts must find, that the conduct of that business is a direct burden upon interstate commerce. I think you will agree with me on that.

Senator POPE. Yes.

Mr. KIRKLAND. But that is not what I was referring to so much here. What I say here is that under this section 5 the Secretary could say, "Why, I am going to pass a rule to regulate boards of trade I think will effectuate the provisions of this act." And that rule might affect the intrastate commerce of a company that did no interstate business and whose intrastate business had no direct effect on interstate business. There would be nothing to prevent him from doing that.

It is no answer to say, of course, that we assume the Secretary—and, of course, there is nothing personal in my remarks about the Secretary—to say that the Secretary will use his best motives because, as the Supreme Court said in the oil case when the Government argued that the President of the United States would use his best motives, the Court said, of course, he would, but it was not a point of motives; it was a point of constitutional authority, and the best of motives was no substitute for constitutional auhority. Now, I submit to you that if you will take the time to refresh your recollection as to the language in the oil case and in the *Schechter case*—and in the *Schechter case* there was that question of the code authority governing and passing rules, and so forth, that affected intrastate as well as interstate business—the Supreme Court said that the statute didn't make any difference, but the Government argued that they could affect intrastate business because it might affect interstate business, and that is one case where the Court made the distinction that you and I have been discussing, but on reading those cases or refreshing your recollection on those cases I think you will come to the conclusion that I have, and that the cases expressly say that there has got to be something in the four corners of this act, some rule of conduct, some standard by which the Secretary can determine what sort of rules he can pass. He can't pass any sort of rule he wants to, because that might amount to legislation, and the question is, Can he under this particular section legislate?

The only answer to it that I can see is for some one to say, "Well, we must keep within the last two lines, 'reasonably necessary to effectuate any of the provisions or to accomplish any other purposes of this act.'" But the difficulty with that is that the Court has held in these two cases that I have been talking about that the subordinate can make rules, make subordinate rules—the executive or administrative officers that you delegate this power to can make subordinate rules, but they must be within certain restrictions written out and spelled out in the act.

Senator HATCH. On that point I have not studied the present bill and am not so familiar with it, but this amends the original Grain Futures Act?

Mr. KIRKLAND. Yes.

Senator HATCH. And I understood you to say the original act does set forth such a standard?

Mr. KIRKLAND. Yes.

Senator HATCH. Now, construing this provision to which you have just referred with the original act, those standards set forth are sufficient to take care of the deficiencies you are now pointing out?

Mr. KIRKLAND. My answer is "No, Senator; because in the original act the Secretary—as I read the original act—the Secretary does not

have the right to establish the rules. He could direct the board to do it, but here the Secretary makes the rules himself."

Senator POPE. Would you draw any distinction between powers given to the Secretary and powers given to the commissions?

Mr. KIRKLAND. No; I would not.

Senator POPE. Well, in the original act very broad powers are given to the Commission, and as I construe the present act it is merely substituting the Secretary for the Commission with reference to the powers which the Commission already has under the original act.

Mr. KIRKLAND. Well, Senator, the powers given in the original act were powers to regulate the grain exchanges.

Senator POPE. Yes.

Mr. KIRKLAND. There were some rules or some provisions in there about requiring a man to report.

Senator POPE. Why would there be any difference in regulating the exchanges and regulating the individual conduct of members of the exchanges?

Mr. KIRKLAND. I will answer you now, but I would prefer, if you will let me just finish this subject, because I intended to take that up.

Senator POPE. All right.

Mr. KIRKLAND. So I submit, Mr. Chairman and gentlemen, that if you will give that matter some thought you will come at least—at least I sincerely hope you will—come to the conclusion I have come to, that that is an unconstitutional delegation of legislative power. And I want to call your attention, just as an illustration, in the Communications Commission Act, you give the Communications Commission power to give a wave length to me or to you, but you don't say to them "You can make any rule or you can give a wave length to anybody that you think will effectuate the purposes of this act or accomplish the purposes of this act." You give them a standard by which they have to be bound, and that standard is that they must, if they give me a wave length it must be on the ground of public necessity, convenience, and interest. There is a standard. When you say to the Secretary of War, speaking as the Congress of the United States, that he may remove obstructions to navigation from the Chicago River or some other navigable stream, you do not give him carte blanche to do that; you say to him, as they said in the Schecter and the oil case, "You must first determine as a fact that that bridge is an obstruction to navigation, and if you determine that it is an obstruction to navigation you are then authorized to remove it." It comes within the second provision of the definition of what the delegation is, as given by the Supreme Court in the oil case.

I must go on, because I don't want to take up too much of your time. I now want to call your attention to what I think in the bill runs counter to the constitutional doctrine of separation of Government powers. If I am a broker on the Board of Trade and I violate any of these rules that are in this act, any of these provisions, or any rule which the Secretary of Agriculture makes to effectuate the provisions of the act, I am haled before the Secretary. He, in his administrative capacity, has made the rule, or, as I say, in his legislative capacity, if it happens to be that kind of a rule, but anyway, in his administrative capacity he has made a rule, and then in his executive capacity he determines that I have violated the rule and

I should be prosecuted, and then in his judicial capacity I am tried before him.

Now, to say the least, gentlemen, I say it is somewhat un-American—and I am not questioning the fact that the Secretary would try to be absolutely fair in all three capacities, but even if you say that you have a right to put this legislative authority in his hands, and you also have the right to say whether or not I should be prosecuted and whether he should act as judge, you certainly should not give him the authority to act as all three in one, because I think that most of us, with all due respect to the Secretary or anybody else who might be Secretary, we would rather be tried by someone who didn't make the rules or by someone who didn't decide that we ought to be prosecuted.

Senator MURPHY. We did that in the original act.

Senator POPE. Except that it applies to the Commission.

Mr. KIRKLAND. In the original act.

Senator POPE. Except that it gives the Commission power to do that.

Senator MURPHY. Yes. One member of that Commission is the individual to whom the witness refers. He is the complaining witness; he is a juror and he is a judge.

Mr. KIRKLAND. Yes. Of course, the Commission is, as I say, two steps removed from other brokers and commission merchants who are tried before the Commission, the Secretary, but as a matter of common knowledge we all know that the Cabinet members who make up the Commission are too busy to sit and listen to testimony. I happen to have had one experience in that matter, when they filed proceedings before the Grain Futures Commission to remove the right of the board of trade to act as a contract market. The Secretary of Agriculture and the Attorney General and the Secretary of Commerce asked us if we would submit it to let someone else hear the evidence. What could we do? We had to agree to it. We didn't have to, but we would have been rather foolish if we did not. They were too busy to hear it. They always will be. They came in and heard the argument. My friend, Mr. Goldsmith, was in the matter on the opposing side. They came in and heard the argument without ever having heard the testimony. I assume that they probably read the testimony before they decided the case, but the chances are 99 out of 100, without meaning any disrespect to them, that they had to have subordinates go over and report to them what they thought.

I have always been of the opinion—and I will admit to you that my opinion on this matter probably is not of much value, because I have had little experience in legislative matters, but I have always been of the opinion that some day Congress would come to the idea of an administrative court. But I do think that this submitting or combining of all three in the Secretary is contrary to the Constitution of the United States, and certainly un-American.

Senator POPE. In that original case in which this act, this 1922 act, was held constitutional by the Supreme Court, is there any doubt in your mind that the Court passed upon that very question in determining that case, as to the delegated powers to the Commission? Because it was upon an order of the Commission that the case arose.

Mr. KIRKLAND. Yes; I will confess to you that I would not waste my time going to Court on the question of the Commission, but I do think that on the question of the Secretary acting in three capacities in trying me as a broker, there would be a fair chance of convincing the Court that it was contrary to constitutional theory of superarrogation of governmental powers.

Senator POPE. But, of course, you had three secretaries then acting, and that was upheld as being constitutional.

Senator MURPHY. It only minimizes the degree. What other points have you, Mr. Kirkland?

Mr. KIRKLAND. The other point is just this, and then I will close: I take the position, as I am forced to, that under the decision of the United States Supreme Court in *Oleson* v. *Board of Trade*, that the Supreme Court of the United States has held that the Chicago Board of Trade was impressed or affected with a public interest and that the Congress had the right to reasonably regulate it; that is, Congress had the right to regulate it with regard to that particular portion of its business that was interstate commerce or was affected with a public interest—that is, a national public interest as distinguished from a State or local public interest—because I think you will agree with me that there might still be some business with the Chicago Board of Trade that was not affected with national public interest.

Senator POPE. But the business of the exchange itself was affected with the public interest.

Mr. KIRKLAND. The Court, in coming to that decision, had before it the testimony taken by the Federal Trade Commission under resolutions of the United States Senate and testimony taken before committees of the Senate and the House in 1922 showing abuses. I think it is safe to say that those abuses are not existent now; but, in any event, they had those before them, and held that unless regulated there might be some burden on interstate commerce. But I say to you, gentlemen, that it is a far cry from regulating the Chicago Board of Trade because it is impressed with a public interest to regulate the brokers and commission merchants on the Chicago Board of Trade, because in the same case, as you will remember, Senator, as in the case of *Hill* v. *Wallace*, which was the case that went up on the Futures Trading Act, the act that preceded the Grain Futures Act and was held unconstitutional because Congress tried to get at it through the taxing system—and in the *Stockyards Act case* that followed the *Hill* v. *Wallace* case the Supreme Court of the United States and the Supreme Court of Illinois held that the mere doing of business in futures between brokers is not in and of itself interstate business.

So that, because you may have a right to regulate the Chicago Board of Trade because it is impressed with public interest, and regulate it to the extent of that public interest, that it comes within interstate commerce, still I contend that you have no right to regulate the brokers on the Chicago Board of Trade nor the commission merchants on the Chicago Board of Trade or any other grain exchange unless—and this is the point you brought out, Senator—unless there is something to show you that their particular business, which is intrastate in itself—that there are certain abuses, exorbitant prices or things of that kind, that would result in a burden upon interstate commerce.

Senator POPE. That is right.

Mr. KIRKLAND. I will not take any more of your time on that. You have been very lenient with me. I do want to call your attention to this, though: Somebody has finally determined that in this regulation of the Chicago board and commission merchants on the different grain exchanges they should be licensed. They call it by a more polite name, "registration", but it is a case of a rose by any other name, and, of course, licensing is the last word in regulation. Licenses are always used—and, I don't care who uses them, they get to the point where, instead of punishing the man by revoking his license for some violation of the rules or the laws, if they haven't got enough evidence to sustain that they will eventually get to the point that when he has to come around on the 31st day of December of each year and get a new license they will use his past offenses, which have been too slight to cause revocation of licenses against him, and will hold up a new license or new registration card.

Now, I want to call your attention to several reasons why——

Senator MURPHY (interposing). Notwithstanding he had not been previously convicted of any offense?

Mr. KIRKLAND. Yes. Now I understand there has been some discussion between the representatives of the grain exchanges and the Grain Futures Administration that may work out, but I want to call your attention to it. It is short.

Senator MURPHY. You think we ought to stop with regulating the exchange?

Mr. KIRKLAND. No; I grant the power to regulate the exchange.

Senator MURPHY. I say, we ought to stop with that?

Mr. KIRKLAND. Yes. There was a committee on stock-exchange regulation which reported——

Senator MURPHY (interposing). Would you mind developing that a little further—your objections to carrying that on to a floor broker?

Mr. KIRKLAND. The point is just this, Mr. Chairman: The Supreme Court of the United States has held that the Board of Trade of Chicago—and that would include all grain exchanges—was impressed with a public interest, and therefore Congress under the commerce clause had the right to reasonably regulate them. It is important to keep in mind what the Supreme Court had before them when they came to the conclusion that Congress had a right to regulate the board of trade, and when they came to the conclusion that the board of trade was impressed with a public interest or affected with a public interest.

They had before them the fact that market quotations were disseminated throughout the country over wires through interstate commerce; they had before them a lot of testimony; and Mr. Chief Justice Taft goes into this testimony in his opinion—that was taken by the Federal Trade Commission under a resolution of the Senate, and also testimony that was given before the Senate and House committees to the effect that numerous abuses took place on the Chicago Board of Trade, and the courts held that Congress had come to the conclusion that unless those abuses were regulated the business of dealing in futures and the business of disseminating prices would result in placing a burden and an obstruction upon interstate commerce, and taking those things into consideration the board of trade should be regulated under the commerce clause of the Constitution, and that

it was impressed with this public interest. Now, there may be some difference of opinion as to whether they found that it was impressed with the public interest just because it was a board of trade or because of the nature of business, or whether they based their finding upon these so-called abuses.

So we are right at the point where no one can deny that Congress has the right to regulate the board of trade; but I want to call this to your attention, that Mr. Justice Cardozo, in his concurring opinion in the *Schechter case*, said in effect—these are not his words—that the *Oleson case* was about the limit; in other words, it was in the twilight zone—I won't stop to define it. In other words, the intimation was that that was about as far as Congress could go in the *Oleson case*. He was using that as an example, because he then went on to say that in the *Schechter case* Congress had given the code authority, just as I claim you have given the Secretary of Agriculture, a roving commission. He said it was a case of delegation gone mad, or words to that effect.

So when you start out with the assumption that the power to regulate the board of trade is in, as I say, the twilight zone, it is about the limit of what Congress can do. You then come to the question of whether Congress can regulate brokers. There is only one way Congress gets any authority to regulate brokers and commission men, and that is because it is under the commerce clause of the Constitution. Now, what is there in the business of the broker—take Mr. Harris, who meets Mr. Boylan on the board of trade tomorrow, and they make a deal on futures. The courts have held in these cases I have told you about that that in and of itself was not interstate commerce, that it was intrastate commerce, and in order to get authority to regulate the broker Congress has got to say that the brokers' business was impressed with public interest.

Senator FRAZIER. Suppose the broker deals largely in these future trades that manipulate the market and corner the market and affects the market in interstate trade?

Mr. KIRKLAND. Well, Senator, the only way I can answer that is that it would all get down to a question of whether this trading you speak of became a direct influence or obstruction or burden on interstate commerce. But you have to start out with the assumption that those trades are all intrastate, and you must remember that you can figure out that almost any intrastate business has its effect on interstate business, but the effect has to be direct. They said in the N. R. A. case—the Government attorneys argued: "The right to fix wages and hours in a business purely intrastate has its effect on interstate", and the court says, "it certainly has, but it is not a direct effect, and if you are going to figure that way you are taking all the powers away from the States."

So I submit that when you get to determining—you have got to first find that the broker in his particular business, which is purely intrastate, is impressed with a public interest. Now, I say to you that it might be impressed with a local interest, and I say to you that the States have the power to regulate that, and do to some extent—these provisions you have in his proposed law about trust funds. We have laws in Illinois that protect funds that are in trust. They don't need any regulation by Congress to protect those funds. The States can protect them.

Senator POPE. Do they protect them?

Mr. KIRKLAND. Yes. I can't say to you, Senator, that there is any particular law that is worded like this, but I venture to say that if I went to a broker and said, "I want you to put my funds in trust", they would either do it or refuse my business, one of the two.

Senator POPE. There had been some cases where commission houses have gone into bankruptcy and funds have been lost because they had been intermingled.

Mr. KIRKLAND. Yes; that is true. I unfortunately know about that. But then you have got to find that this business as a broker has such a direct effect on commerce that it is a burden or obstruction, and I have read all the testimony that was produced before the committees of the House on these different bills. Of course, there have been none produced here yet, but I have yet to hear any testimony from which you gentlemen could assume that that business has such a bearing on interstate commerce that it amounts to an obstruction.

Now, I just want to call your attention to the report of the committee on stock-exchange regulation by the Secretary of Commerce, dated January 1934, in regard to licensing stockbrokers. You gentlemen may remember, but I don't remember that there was any serious contention in considering the securities and exchange bill that the brokers should be licensed, but this gives the reasons much better than I can state them:

> Your committee does not consider it desirable to require the licensing of individual brokers. There is a distinct danger that such a system would break down the controls already exercised by the stock exchanges through their business-conduct rules, which operate, or can be made to operate, with summary speed and effectiveness. If brokers were licensed, it would inevitably be thought that the proper method of disciplining a broker would be revocation of his license by the governmental authority. An exchange might well hesitate to deny its privileges to a broker whose license was still in full force and effect. Inevitably, however, the process of revoking a license would be much less summary than the action of a business-conduct committee of the exchange. The proceeding would take place at Washington, not locally. To some extent, it would have to follow more or less protracted forms of judicial procedure and would have to be subject to review of the courts. These factors, while cutting the ground from under the exchanges' only disciplinary procedure, would substitute a procedure slower and less certain of accomplishing results.

Senator POPE. From whom are you quoting?

Mr. KIRKLAND. This is the committee on stock-exchange regulation report made to the Secretary of Commerce. They go on:

> It seems distinctly better, in the opinion of your committee, to stimulate the exchanges to further disciplinary activity by holding to a high degree of accountability the conduct of the members.

Now, just one word in that connection. Under the law of Illinois and under the law of the United States courts, as laid down in the seventh judicial district, where Chicago is located, when a man is suspended by the Chicago Board of Trade and he takes his case to court, there are just three things the court will listen to: First, did he have notice; second, did he have an opportunity to be heard—constitutional right of notice and opportunity to be heard; third, was there any evidence—not the weight of the evidence, as this act says, but was there any evidence to sustain the findings? Because the courts will not go back of the judgment of the governing body of the board and overrule them if there was any evidence to sustain their finding. In other words, they are not going to question their

judgment. Under this act, it would take much longer to get a broker off the board of trade under this proposed act than it would by the disciplinary action of the board.

Thank you very much, gentlemen.

Senator MURPHY. Do you want to submit that paper?

Mr. KIRKLAND. Here is a letter, marked "copy"—no; this is not mine, Mr. Chairman; it is an opinion on the constitutionality of this part of the act licensing and regulating brokers, by Mr. Morrison, of the firm of Morrison, Nugent, Wylder & Berger, attorneys for the Kansas City Board of Trade. I know Mr. Morrison personally, and I know that he is an attorney of standing in that community. I don't know whether I have a right to ask that that go into the record.

Senator MURPHY. The gentleman from Kansas City may want to see it. Without objection, it will appear in the record.

(The paper referred to follows:)

MORRISON, NUGENT, WYLDER & BERGER,
Kansas City, Mo., April 11, 1936.

In re: Jones bill (H. R. 6772).

Mr. W. B. LATHROP,
President, Board of Trade of Kansas City, Mo., Kansas City, Mo.

DEAR SIR: We have examined the provisions of the so-called Jones commodity exchange bill, H. R. 6772, and beg to submit herewith our opinion with regard to its provisions.

It is not our purpose to discuss the act minutely, section by section, in determining the question of its constitutionality. There are certain provisions, which considered by themselves might be held to be within the scope of the decision in *Board of Trade* v. *Olsen* (262 U. S. 1), and therefore to be valid.

Broadly speaking, in our opinion, the act, considered as a whole, is entirely beyond the powers granted to Congress to the provisions of the Federal Constitution.

It is well-established law that the Federal Government is not vested with the police power in the sense that that term is used and applied to powers of the governments of the several States. Its powers are limited to the purposes granted in the Constitution and in this instance can only be justified, if at all, under the granted power to regulate interstate commerce.

Regulation of trading in grain futures rests upon a very narrow ground. These transactions, considered by themselves, are intrastate (*Hill* v. *Wallace*, 259 U. S. 44; *Ware & Leland* v. *Mobile County*, 209 U. S. 405). In *Board of Trade* v. *Olsen*, *supra*, it was pointed out in the opinion by Mr. Chief Justice Taft that "the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring burden and obstruction to that commerce." It is evident, therefore, that Congress is limited, both with respect to the subject of regulation and with respect to the extent of public interest to those matters which directly affect this single element with respect to which it is held that trading in grain futures affects interstate commerce.

In Cooley's Constitutional Limitations (8th ed., 1927, p. 1308) it is said:

"The extent to which a business may be regulated because it is clothed with a public interest depends on the nature of the business, the feature which touches the public, and the abuses reasonably to be feared."

In *Bartlett Frazier Co.* v. *Hyde* (65 Fed. (2d) 350) the provisions of the present act were upheld as to requirements for reports and the right of inspection of books and records. In upholding these provisions, however, the Court said that "the very requirement of the information would of itself have tendency to discourage the unlawful manipulation to which the act is aimed."

These cases indicate the limitations of the powers of Congress which we do not deem would be materially enlarged by the legislative finding contained in the Jones bill with regard to the enlarged effect of excessive speculation as a burden on interstate commerce. It is difficult to distinguish between the effects of excessive speculation and the effects of manipulation, corners, and violent fluctuation of market prices, all of which were taken into consideration in determining the validity of the original act.

There are no legislative findings either in the Grain Futures Act or in the Jones Act which tend in any way to show that the grain exchanges are directly involved in this alleged obstruction to interstate commerce. Under the Grain Futures Act the exchanges are charged with the duty of enforcing certain of its provisions. The exchanges do not themselves deal in buying or selling grain or other commodities. They merely furnish facilities for bringing together buyer and seller and recording the transactions made on the floor. The present act, therefore, like the Grain Futures Act, is directed at individual brokers and their customers. It is the purchase or sale by the individual which is the subject of regulation. If the individual buyer or seller so handles his purchases or sales as to manipulate or corner the market, or if he indulges in such excessive speculation as to cause violent fluctuation of prices which obstruct the free flow of interstate commerce, then it is the legitimate province of Congress, as interpreted by the Supreme Court, to take proper steps to eliminate this burden.

The plaintiffs in the *Bartlett Frazier case* were of the opinion that Congress had gone too far in the provisions of the Grain Futures Act in providing for the making of reports and the inspection of books of the brokers without regard to whether traders were suspected of or charged with violation of the act. The seventh circuit court of appeals in that case upheld the right of the Secretary of Agriculture to obtain contents of books and records, but in stating the general principle applicable, qualified it by the phrase "so far as such disclosures may be reasonably necessary to the due protection of the public."

When we examine the pending bill we find that it shows palpably that the authors have drawn it under a complete misapprehension as to the powers of Congress to deal with this particular subject matter. They (the authors) are evidently laboring under the false idea that they are dealing with a subject which is as completely within the power and jurisdiction of congressional activities as though the subject matter were a railroad actively engaged in interstate commerce by transporting passengers and freight across State lines. The bill recognizes no limits of congressional jurisdiction. It makes it a criminal offense to cheat or defraud a customer, or to make a false report or statement of a transaction to a customer. What possible connection these provisions could have with manipulation, corners, or excessive speculation is inconceivable. The same is true of the provisions making it unlawful to deceive, or attempt to deceive, a customer, or to bucket an order, or fill it by offset against the order or orders of any other person. It is also made unlawful for a broker to become the buyer or seller with respect to an order of a customer without the customer's consent. It forbids the making of any "wash sale", "cross trade", or "accommodation trade." It makes unlawful the purchase and sale of indemnities commonly known as puts and calls.

It requires every commission merchant to register and to treat the money or securities received as a margin to secure trades as belonging to the customer, and forbids the use thereof by the commission merchant to margin or guarantee the trades or contracts, or to secure or extend the credit of any other customer or person, with certain specified exceptions. It makes it unlawful for any person to act as a floor broker without registering with the Secretary of Agriculture. It gives the Secretary of Agriculture the power to fix the form of application for registration and to require the giving of such information and facts as he may deem necessary, including minute information with respect to corporations which may include the names of all of its stockholders.

It provides for revocation of the license or registration of any commission merchant or a floor broker who violates the provisions of this act, or any rules or regulations of the Secretary of Agriculture made thereunder, or fails or refuses to make any report required, or fails or refuses to keep books and records required. It makes it an offense to falsely represent that one is a member of a contract market or the representative or agent of such member.

It requires each contract market to furnish the Secretary of Agriculture promptly, true copies of all "bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof, or any committee, and of all changes and proposed changes therein." This provision is not limited in any way to rules or resolutions pertaining in any way to future trading or which would have any bearing upon the object of this bill or of the Grain Futures Act.

It requires each contract market to submit to an inspection of all of its books, records, minutes, and journals of its proceedings, as well as of its governing board and all committees.

It compels contract markets to require the operators of warehouses out of which commodities are deliverable on future contract "to make such reports,

keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe."

It authorizes the Secretary of Agriculture to extend the period for delivery of cash grain on contracts for future delivery after the delivery month has closed. It compels the exchange to require 3 days' prior written notice of intention to make delivery on a future contract, and permits the Secretary of Agriculture to extend the period of such notice. It provides for the delivery on all future contracts of commodities of grades conforming to United States standards.

It provides that the Commission designated under the act may issue cease-and-desist orders with respect to the violation of any of the provisions of the act or any of the rules or regulations of the Secretary of Agriculture thereunder against any board of trade or director, officer, agent, or employee thereof, the violation of which is made a misdemeanor punishable by fine or imprisonment.

It further vests the Secretary of Agriculture with the arbitrary power of fixing a limit in respect to the amount of grain which any person may buy or sell for future delivery on any given day.

This recital of the provisions of the act is not intended as an exhaustive analysis of its provisions, but it is made to show that we have here a degree of minute regulation, supervision, and surveillance, coupled with penal provisions, which, taken as a whole, is without parallel with respect to any industry or calling. Even as to the Interstate Commerce Commission, its powers and authority with respect to supervision and regulation of railroads are hedged about with certain safeguards which are not to be found in this act.

It cannot be seriously contended by any impartial or unbiased person that there is any pretense of limiting the scope of this act to the limited power of Congress with respect to contracts for the future delivery of grain, and beyond this to scrutinize all of the official acts of the exchanges whether or not such acts pertain in any manner to the contracts for future delivery of grain.

Under the provisions of this act, by the simple expedient of canceling the merchant's license or registration, his entire business may be destroyed because of a violation of an arbitrary regulation prepared by a minor official of a bureau with the perfunctory sanction of the Secretary of Agriculture.

Corporations employing scores of persons will be compelled to do business daily under the consciousness of this ever-present threat.

It must be borne in mind that insofar as relates to the general trade and business carried on by the commission merchants, including their activities on the floor of the exchanges, they are not engaged in rendering public service. Their business becomes affected with the public national interest only to the limited extent that it touches upon and burdens interstate commerce as defined in *Board of Trade* v. *Olsen*. The instances in which the transactions of these commission merchants and their customers will burden interstate commerce, or have burdened interstate commerce, are also negligible compared with the great volume of business which they carry on as corn merchants.

In *Federal Trade Commission* v. *Baltimore Grain Co.* (284 Fed. 886, affirmed by the Supreme Court, 267 U. S. 586), it was said:

"The respondents in these cases are private corporations, by which various individuals more conveniently carry on that trade of corn merchants which antedates the beginning of recorded history. They have and exercise no franchises other than that of being corporations. They are not engaged in rendering public service, except in the sense that such service is rendered by everyone who follows any useful calling."

In *Federal Trade Commission* v. *American Tobacco Co.* (264 U. S. 298), it was said in the opinion by Mr. Justice Holmes:

"The mere fact of carrying on a commerce not confined within State lines and of being organized as a corporation, do not make men's affairs public, as those of a railroad company now may be."

Mr. Justice Sutherland, in the case of *Tyson & Bro.* v. *Banton* (273 U. S. 418, 431), said:

"And, finally, the mere declaration by the legislature that a particular kind of property or business is affected with a public interest is not conclusive upon the question of the validity of regulation. The matter is one which is always open to judicial inquiry."

The case of *Wolff Packing Co.* v. *Court of Industrial Relations* (262 U. S. 522) contains the most exhaustive and careful discussion of the limitations upon the right of regulation of businesses affected with the public interest that can be found in the opinions of the Supreme Court. Mr. Chief Justice Taft, who wrote that opinion, classified those businesses which may be said to be clothed with a public interest and pointed out that the degree of regulation to which each business was subject depended upon the class to which the particular business belonged. In the first class are only those who, under the authority of a public grant of privileges have the affirmative duty of rendering a public service demanded by any member of the public. Such, he says, "are the railroads, other common carriers, and public utilities." In the second class are those which from the earliest times have been recognized as occupations which are exceptional and to which the public interest attaches. These, he says, are such as "the keepers of inns, cabs, and gristmills." The third class is stated, as follows:

"Businesses which, though not public at their inception, may be fairly said to have risen to be such, and have become subject in consequence to some Government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner, by devoting his business to the public use, in effect grants the public an interest in that use, and subjects himself to public regulation to the extent of that interest, although the property continues to belong to is private owner, and to be entitled to protection accordingly."

Clearly the business of a grain broker or commission merchant falls only within the third classification. Such business can only be held to be subject to regulation at all because, in the language of the opinion, it has "come to hold such a peculiar relation to the public that this is superimposed upon them."

At page 539, the Chief Justice says:

"To say that a business is clothed with a public interest is not to determine what regulation may be permissible in view of the private rights of the owner. The extent to which an inn or a cab system may be regulated may differ widely from that allowable as to a railroad or other common carrier. It is not a matter of legislative discretion solely. It depends on the nature of the business, on the feature which touches the public, and on the abuses reasonably to be feared. To say that a business is clothed with a public interest is not to import that the public may take over its entire management and run it at the expense of the owner. The extent to which regulation may reasonably go varies with different kinds of business."

In determining the degree of regulation which Congress may impose upon grain merchants and the exchanges upon which they gather to do business, we find not only the limitations expressed by the Chief Justice in the foregoing opinion as to "the feature which touches the public, and on the abuses reasonably to be feared", but we find also limitation as to the "feature" which touches upon and burdens interstate commerce.

Stated in the broadest sense which the proponents of this bill could claim, the basis of regulation as applied to the subject matter of this bill, does not justify the legislative powers sought to be exercised therein.

Very truly yours,

MORRISON, NUGENT, WYLDER & BERGER,
By E. R. MORRISON.

Mr. STURTEVANT. We will now return, if you please, to further consideration of section 4 (*a*) of the bill, the same section upon which our other witnesses, Mr. Grimes, Mr. Theist, and Mr. Harris have testified. I will call Mr. Mirick.

STATEMENT OF E. H. MIRICK, PILLSBURY FLOUR MILLS CO., MINNEAPOLIS, MINN.

Mr. MIRICK. Mr. Chairman and gentlemen, my name is E. H. Mirick, Minneapolis, Minn. I am speaking as the authorized representative of the following Minneapolis milling companies—General Mills, Russell Miller Milling Co., King Midas Mills Co., Commander Milling Co., Standard Milling Co., and Pillsbury Flour Mills Co.

Personally, I am director in charge of grain purchases for Pillsbury Flour Mills Co.

Before proceeding with my statement I would like to carry out a request of President Smith, of the Millers National Federation, who was the first witness before you this morning. He is of the opinion that he may not have made it quite clear as to some of the provisions with regard to margins exacted from hedgers. I believe he said he didn't draw a distinction between margins exacted from hedgers and margins exacted from speculators. As a matter of fact, the margin requirements exacted from hedgers in the Chicago market are now set at 4 cents per bushel.

Senator MURPHY. For speculators?

Mr. MIRICK. Speculators are 6 cents.

Senator POPE. Six cents?

Mr. MIRICK. Six cents a bushel, 150 percent of the clearing-house requirements, which happen at this time to be 4 cents per bushel.

Various features of the bill, which is the subject of this hearing, are objectionable to the milling industry. I would like to especially call your attention to some of its provisions which, if enacted into law, would work particular hardship on the processors of the farmers' wheat, the flour millers.

Limitation of lines as provided in the bill would reduce speculation to a point where the volume of trading will be insufficient to permit the hedger to get in and get out of the market without disastrous losses. True, the bill places no handicaps on the hedger so far as his own operations are concerned but unless volume of trading is great enough to make a broad, liquid market, price fluctuations will be rapid and drastic. Under such circumstances, the flour miller will be obliged to allow for a wider margin when selling a hedge against cash wheat purchases and also allow for a wider margin when buying in hedges against flour sold.

The price of flour is governed more nearly by the price of the raw commodity—in this case wheat—than are the prices of most products in comparison with the prices of the respective raw commodities used in their manufacture. Approximately 5 bushels of wheat are required to make a barrel of flour and, consequently, a change of 1 cent in the wheat market is equal to about 5 cents per barrel of flour. The milling industry is highly competitive and a great deal of flour is sold on a narrow margin of profit. Flour prices are changed each day any change of consequence occurs in the wheat market and such prices remain in effect until the opening of the wheat market the following day. The miller has no way of knowing in advance how much flour he will sell overnight and can only act to buy the necessary wheat after computing the quantity of sales reported to the home office by telegraph.

If, for instance, sales for 1 day should amount to 50,000 barrels, it will be necessary to buy 250,000 bushels of wheat to cover such sales. If the wheat market lacks volume, and the miller is obliged to bid up to get his necessary wheat, every cent over the previous day's market close means a loss of 5 cents per barrel, and such losses constitute a direct addition to the cost of operation. Limitation by law or regulation of the quantity of wheat which may be held by a speculator on either the long or short side will curtail the market action so radically that losses will be sustained in a great many instances as described above.

Another objectionable feature of the bill is the proposed limit to be placed on the quantity of wheat which may be traded in on any one day. Such a provision will reduce trading and put additional penalty on hedgers.

The best way to arrive at the proper price of a commodity is to allow a free and open market to function. I would like to express that as an opinion, but I believe it is not subject to contradiction. I believe the best economists will agree with that statement. I do not wish to be understood as advocating that trading should be allowed to run wild. Any tendency toward manipulation or cornering can be easily detected and controlled, and is being so handled today. As an example, the Minneapolis market has very effectively come through two crop scares and the war scare the past 2 years, and fluctuations have been unimportant.

I speak for the companies mentioned at first when I plead for the use of marginal requirements as a controlling means in the wheat market. The requirements in use under the code are in use in Minneapolis today and are, we believe, the most effective method of handling the situation.

Senator CAPPER. You speak of the code. What code do you refer to?

Mr. MIRICK. The millers' code that was in effect up to the time of the going out of the N. R. A.

The flour miller uses the wheat market as an insurance medium, and the lower the premium he is obliged to pay, the lower will be the cost of flour to the consumer and the higher will be the price paid to the producer of wheat. In other words, the margin between producer and consumer must be held as low as possible, and we, therefore, view with disfavor and alarm any law which will increase such margin and thus reduce consumption. I would like to emphasize that statement to this extent: It has been stated before here in the testimony that the experiences which have caused losses in getting in and out of the market are necessarily taken into consideration when further commitments are made, and we are making every effort possible to keep this margin as low as possible—this margin between producer and consumer—because we cannot successfully prosecute the business unless we can do so.

One section of the proposed bill provides for various changes in the time of delivery on contracts, such changes being at the discretion of the Secretary of Agriculture. When a trade is made in May wheat, for instance, it is now definitely understood by the buyer that wheat will be delivered to him sometime during the month of May, the time of delivery being at the option of the seller. Inasmuch as the seller now has 30 days in which to make up his mind as to when he wishes to make delivery, I can see no possible benefit to be derived by creating uncertainty as to the time of delivery.

The usefulness of the contract to the buyer is greatly impaired unless he knows definitely the latest date on which he will receive the wheat purchased. The proposed law leaves that question in the air. I would like to enlarge on that slightly, when I say that a great many times flour is sold for future delivery, as you know, and delivery is specified very clearly in the contract, and if the futures market is to be used in the purchase of this wheat—and it is used a great

deal—the flour miller must have an idea as to whether he is going to get wheat if the contract is to be of any use to him.

Speaking along broad general lines, I would like to urge that where control of commodity exchanges is necessary, such control be by law and not by the use of broad, discretionary powers granted to an individual or individuals. Plans can be made in advance to meet the conditions imposed by a law, but the possibility of regulations having the force and effect of law being passed out on short notice creates an uncertainty very hard to combat.

I thank you, gentlemen.

Senator MURPHY. Does your company buy or sell futures in excess of your needs, as determined by past sales?

Mr. MIRICK. We have a very decided policy of keeping hedges on the market, and I am speaking now for my own company, and I am of the opinion, which is substantiated by knowledge in some instances, that other northwestern companies, and I believe industry as a whole, adhere very closely to that policy. We try our best to avoid speculation. We must have hedges against our commitment, and if those hedges are going to cost money, it necessarily means a widening of our margin if we are to stay in business.

Senator MURPHY. Have you found it necessary to deal in excess of 500,000 bushels a day?

Mr. MIRICK. Very often.

Senator MURPHY. And on those occasions are your offerings taken by speculators?

Mr. MIRICK. I believe it is absolutely impossible for the markets to function without the speculator. It is an impossibility for hedgers on opposite sides of the market to always be of the same mind or, in other words, to be of the opposite mind at the same time. If we happen to want to buy a large quantity of futures to protect the flour business, it may not be at a time when the seller of futures is in the market; in fact, we are obliged to accumulate our wheat in a large way when wheat is moving immediately after and soon after harvest, and it very often happens, and, in fact, it nearly always happens, that the flour buyer is not in the market in a large way at that time.

Senator MURPHY. When you take your wheat into the elevator, you then hedge it with a sale?

Mr. MIRICK. Yes, sir.

Senator MURPHY. Against the anticipated time of its conversion and sale in the form of flour?

Mr. MIRICK. Yes.

Senator POPE. And you think it would be unwise to limit those speculators that you have referred to that may be desirable, first, in hedging activities—you think it not desirable to limit them at all in their daily transactions?

Mr. MIRICK. I think it is entirely unnecessary to limit speculative activities by law. If the market shows trends of being manipulated, cornered, or anything out of the way is occurring, it can be handled very well by the combined efforts of the Grain Futures Administration and the business conduct committees of the exchanges, and the history of the last 9 years has amply demonstrated that to our satisfaction.

Senator POPE. You remember the price collapse in July—July 20, 1933, when the Chicago wheat futures declined from 24 to 27 cents, and corn futures from 17 to 18 cents.

Mr. MIRICK. Yes, sir.

Senator POPE. And at that time an investigation was made by the Grain Futures Administration. I just want to read you two sentences here [reading]:

> It was found that this debacle resulted principally from the activities of not more than 10 traders who controlled 15 large speculative accounts, and gradually accumulated inordinately large holdings of both wheat and corn futures during the week preceding the collapse; that a large portion of these tremendous holdings were suddenly dumped on the market, and that while the large scale liquidation in its early stages was caused by the taking of profits by large operators, it quickly compelled the liquidation of large accounts that were inadequately margined.

Then in conclusion, this statement was made [reading]:

> The economic catastrophe again demonstrates conclusively that the concentration in a few large accounts of too great a proportion of the total open commitments in grain futures is virtually certain to result in an erratic price movement, irrespective of whether such inordinately large accounts be on the long side or the short side of the market.

In your experience, you have never known or suspected that that was the cause of such price fluctuation as appeared in 1933, since this act was in effect, the original act?

Mr. MIRICK. No; I believe that the proposal put forth to margin trades, speculative trades, and to require more margin for larger lines, would adequately control that situation. As I have said, I have not specified the amount of such margin requirements.

Senator POPE. Isn't it also true that under the present law those margin requirements may sometimes be made by special arrangements with the commission houses, whereby they are credited without the money actually being put up? Haven't you known of instances of that kind?

Mr. MIRICK. I am not entirely familiar with the arrangement and technical rules governing the handling of speculative accounts in these grain exchanges. I would like to leave such testimony to those men, but I would like to put forth this broad general principle which I believe is fundamental: The only effective way of registering the price of a commodity is by broad, general participation of the public, and by that I mean all those interested in that commodity. I believe the consensus of opinion of such representatives will come nearer to properly registering the price of a commodity than any other method yet devised. If we are going to curtail the speculator and by so doing incur the feeling that will exist in the minds of all speculators, that uncertainty exists, you are going to create a situation which will keep speculators out of the market.

Senator POPE. If we fixed a limit, wouldn't that be the most certain thing they could depend upon, instead of as at the present time having no limit?

Mr. MIRICK. On the contrary, I think if a limit were fixed we would create the very uncertainty that I fear, and in that event we would have fluctuation which would be much more drastic than the fluctuations which exist if you allow a broad general participation by the public in the market. I want to add right here, that I am not advocating wild speculation; I am not advocating letting long lines

accumulate without the knowledge of those in authority, but I believe that the exacting of these greater margins than existed several years ago will have a decided curbing tendency.

Senator CAPPER. Your argument here has been to the fact that harm might be done to the market by the authority lodged in the grain futures department by this legislation—I understood that to be the general tenor of your argument. Have you any evidence, any specific evidence, of harm that has come to the market in the past by reason of the action of the grain futures department in handling, administering the law as it is now?

Mr. MIRICK. I believe that the policy now in effect of having reports made to the Grain Futures Administration whenever lines reach a certain height is an entirely proper procedure, and I doubt very much if any of the grain exchanges or responsible representatives of the grain exchanges have any antipathy to that procedure. I think it is sound procedure.

Senator POPE. But what Mr. Cutten did was to divide it up into 35 different accounts of his associates and relatives, according to the complaint filed against him, and the facts were upheld by the circuit court of appeals. He divided into 35 different accounts.

Senator MURPHY. That was a violation of the law.

Senator FRAZIER. I understood you to say you are in favor of a free and open market. I suppose you mean by that, let people speculate as much as they want to. In this bulge in the market in 1933 that Senator Pope spoke of, it was current, I think, all over the wheat States that pretty nearly everybody in the towns through Minnesota and North Dakota and other wheat States to take a flyer in the market when wheat was going up. Stenographers, bootblacks, bellboys, and everybody that had a little money went in and bought on margin and lost a lot of money. You certainly don't approve of that kind of free and open market, do you?

Mr. MIRICK. Well, I think a great deal of the speculation of the character you describe came about because of lack of reasonable margin requirements.

To go back slightly, I said in my testimony that the miller required that he be able to use the wheat market as an insurance. I believe that insurance is not effective if speculation of the character you speak of is allowed to run wild, but such speculation would not be in existence were adequate margin requirements made.

Senator HATCH. You mean by that you would just put the margin requirements so high that the class of people Senator Frazier refers to would not have the money to speculate with?

Mr. MIRICK. Yes; I think that the bootblacks, for instance, mentioned by the Senator, have no business in the wheat market.

Senator POPE. Your 20-percent requirement as to the large operations would not affect that situation, where the bootblacks got into the game.

Mr. MIRICK. No; it would not.

Senator MURPHY. The stock exchange requirement of a larger margin?

Mr. MIRICK. Yes.

Senator HATCH. That class of speculator hasn't had much to do with the market, though.

Senator MURPHY. But the point is that this kind of margin was not exacted until the Securities and Exchange Commission got a voice in the proceedings of the stock exchange.

Mr. MIRICK. I did not understand you, Senator.

Senator MURPHY. I say the point is that the higher margin was not exacted from traders until the Securities and Exchange Commission got a voice in the regulation of the exchanges.

Senator MURPHY. For instance, they were perfectly free to go ahead and rig the stock market, and self-control of the exchange was not sufficient to defeat that or prevent it or cure it; we had to go in with legislation to accomplish that, and it is now under the scrutiny and supervision of the Exchange Commission.

Mr. MIRICK. I do not wish to be in the position of saying that grain exchanges back through the years have been beyond reproach. I am not carrying a brief for them in that way. There has been considerable advance in the handling of these matters. When abuses have crept in remedies have been invoked, and I believe that the history of the handling of trade in grain exchanges the last 2 years shows that, regardless of the impetus which caused reforms, the reforms have taken place, and I believe they will continue so to do.

Senator MURPHY. I don't doubt it at all. The governing committee of the Chicago Board of Trade appears during the last 2 years, as has been testified here, to have made an honest effort to conform its practices to what decent public opinion demanded. The fact remains, however, that the position of the Government with respect to that committee is merely a consultative one. A member of the Department of Agriculture is a consultant merely, without any authority or power to enforce its will. He would be presumed to represent the voice of government in the determination of the rules they were to invoke or revoke. It seems to get around to this in the testimony so far adduced, that opposition to this provision is based on some psychological factor, the fear that somebody is going to be frightened by regulation of the market—regulation of the amount of grain that may be traded in on a given day—and scared out of the market.

Mr. MIRICK. If that fright results in a curtailed trading it is more than a case of nervousness.

Senator MURPHY. It has been claimed that disturbances of trade will result from a fear in the trade that there will be the application of some rule against it—an undefined rule that may be promulgated by the Commission or the Secretary of Agriculture—and consequently that it will deter many from going into the market.

Mr. MIRICK. Please understand, Mr. Chairman, the miller as such has no direct interest in the speculator except that if the speculator is eliminated we will be obliged to reorganize our mode of procedure.

Senator MURPHY. Of course, you understand there isn't any purpose in this bill, as I read it, to eliminate the speculator. It leaves him in the picture, but the feeling is based on the experience of the Department of Agriculture that without restricting the lines that may be put out or taken in on a given day the interests of the producer are prejudiced; and the case of the profits made by Mr. Cutten in his operations is cited to prove that contention. I assume, as a matter of course, that at some time during the trading day the specu-

lator is going to disappear from the market because of the limitation on his line. He will likely satisfy himself, say, in the morning, and won't trade in the afternoon if he has his 2,000,000 line out on that day or his 500,000 line, or whatever line may be determined on. He is going to be satisfied, and he is going to disappear from the market on that day. If we impose that limitation on him, what assurance is there that more speculators will not come in if there is large volume to be handled?

Mr. MIRICK. If he fears constant changes in the regulations and if he fears that he will be told to do thus and so soon after accumulating a line, I think the timidity that he will exhibit is going to be very marked. We believe that is going to be the case. We believe it so much that we hate very much to see a situation of that kind develop. We do business, as I think statistics will prove, on as narrow margin of profit as there is in almost any business, and one of the reasons for that narrow margin of profit is the insurance feature which comes to us as the result of a fluid wheat market which enables us to get in and out at the time we must get in and out.

Senator HATCH. I want to ask you this question: The hedges that you can make do enable you to insure your business?

Mr. MIRICK. To a very marked extent.

Senator HATCH. Do those same hedges operate to insure the price to the producer?

Mr. MIRICK. Well, that would be a very long question to answer. I don't know as I could take every step in that and answer it, but if we do, as we have done today, got out to the country with a price on flour, that price on flour holds all day today and it holds until the opening of tomorrow morning's market. Now, because of our assurance, which is quite a definite assurance, that we can buy the wheat to cover those sales tomorrow morning at a reasonably definite fluctuation—and by that I mean fractions of a cent compared with the market closing today—we can quote flour prices lower than if we must take the greater risk of figuring that possibly we will have to pay 1, 2, 3, 4 cents a bushel more for the wheat than we figured on when we quoted the flour.

Senator HATCH. Right there, you would say then that the system did insure a price to the consumer?

Mr. MIRICK. It does to quite an extent, and I started to explain, the hedging which we practice by using the grain futures market does insure, except in the case of premiums on wheat, and we must take that into consideration; however, premium activity is much smaller and much smaller in scope than the activity in the wheat market, and we are less apt to have a fluctuation which would be disastrous overnight on wheat premium than we would be a fluctuation in the grain-futures market.

Senator POPE. It is also claimed that it has that effect on the producers, the one who originally sells the gain, that the hedging enables him, or enables those who buy his grain, to pay him a little better price, because they do not have to assume these risks that you would have to assume if you did not hedge.

Mr. MIRICK. That is very true. We must necessarily accumulate our wheat when it is moving, and we cannot easily at that time—in fact, we never can, practically speaking, sell the flour at that time. Now, if we can sell our hedge, sell our futures against the cash wheat we are buying continuously, and sell it on a fairly stable market, we can handle that end of the business on a narrower margin than if we are constantly or often, I will say, obliged to sell our hedge off at a much lower price.

Senator POPE. Were you in business during the war, when the exchanges were closed?

Mr. MIRICK. You mean the World War? Yes. I was not in the milling business; I was in the grain business, however.

Senator POPE. In that respect, did the closing of the exchanges have any noticeable effect on the price?

Mr. MIRICK. It stopped everything dead still until the Government came in with a fixed price, at which time we were, of course, obliged to adhere to that one price. There was no market.

Senator FRAZIER. They didn't close until the price was fixed. The exchanges were not closed until prices were fixed on wheat, were they?

Mr. MIRICK. No; they were not; but he asked what effect it had. I said when the grain market closed and we had no market, then the Government fixed the price.

Senator FRAZIER. The Government fixed the price first, I understood.

Mr. MIRICK. Well, they took place about simultaneously.

Senator POPE. In the absence of price fixing by the Government, I was interested to know just what would happen if the exchanges were to close and wheat had to be dealt in as an actual commodity and a corresponding price paid for it—in other words, if there was no market at all.

Mr. MIRICK. I have opinion on that subject. I believe that if wheat would be flowing to market at harvest time and immediately thereafter you would have a very drastic decline in prices, because there would be no flour buyers to take up the slack. Inasmuch as we have a futures market, the intelligent speculator will not allow that price to get below what he thinks is a legitimate price.

Senator MURPHY. To what extent do your purchases and sales influence the market? You must deal—the milling interests I now refer to—you must deal to a tremendous extent in wheat on the exchanges.

Mr. MIRICK. You mean to what extent our ordinary day's business would influence the market?

Senator MURPHY. What fraction of the total trading in wheat represents the miller's trading?

Mr. MIRICK. I could not answer that. It is a fairly good amount, but I have no way of answering that question intelligently.

Senator MURPHY. When you determine when the wheat is coming onto the market, how do you go about determining what is a fair price to buy that wheat at?

Mr. MIRICK. We make every effort to have our buyers posted on the market. That covers quite a little territory. But it is descriptive.

Senator MURPHY. Is the price offered related to the price at which you expect to sell your finished products—would like to sell the finished products?

Mr. MIRICK. No; it is not. It is the market at which we are enabled to buy wheat, and that market is determined as a result of a meeting of the buyer and the seller.

Senator MURPHY. Do you as millers sell package goods at a given price?

Mr. MIRICK. At a given price? No.

Senator MURPHY. Take Wheatena, package Wheatena. Do you sell that at a price that you make an effort to maintain?

Mr. MIRICK. I believe most package goods—in fact, the package goods sold by our company—are sold on a price which is very directly regulated by the wheat market, if it is a wheat product.

Senator MURPHY. It is a variable price, then, is it?

Mr. MIRICK. Oh, yes.

Senator MURPHY. You don't make an effort to maintain the price of package goods from year to year at the same figure?

Mr. MIRICK. Not at all. From a practical standpoint it is not—well, I will say it is not practical to set the price of a package of breakfast food every day, because the fluctuation on a 15-cent package of breakfast food, based on the fluctuation of 1 cent a bushel on the wheat market would be so small as to be an impractical procedure, but by and large the price of breakfast foods is influenced by the wheat market, because that is the raw product which comes into its manufacture if it is a wheat product.

Senator FRAZIER. The price is rather high correspondingly, 15 cents for a package of breakfast food containing about 1 pound of wheat.

Mr. MIRICK. Well, in the first place I can't answer that question, because that package-goods price is made up by a great many things besides the cost of the raw material.

Senator MURPHY. I would like to follow through on the thought I started. Here is a given package of cereal that sells for 10 cents the year round, year after year. Now, let us assume that it is oats instead of wheat. The cost of packaging that oats and processing it—all the costs make up an amount definitely known to the manufacturer. There is a certain margin of profit that the manufacturer wants to make on sales. He makes his purchases of oats, we will assume, when the oats are coming on the market. What is the consideration that enters into his mind as to the price that he will pay for those oats? My thought is that it is the price that is related to what he is going to sell those oats for in package form.

Mr. MIRICK. Mr. Chairman, that is a merchandising matter and one on which I really am not capable of testifying.

Senator MURPHY. Well, it is really more than a merchandising matter, because if his dealings in the market are in such volume as to influence him, as to influence that market, when he makes a bid price for oats in the open market, that price is related to what he can put those goods out at a profit subsequently at a fixed retail price; and I am thinking that that makes for a static price for the oats.

Mr. MIRICK. As an opinion I would say "yes"; he may be in the position of carrying on an advertising campaign of considerable magnitude, and it may be very essential to him that he be able to name a price which he is going to charge.

Senator MURPHY. We grant all that, but when he goes out to buy those oats, related to that as a final consummation is the fact that he is going to sell the goods at 10 cents. Doesn't the ability to hedge that price then have the effect of fixing the price of oats, stabilizing it at a lower price than otherwise might result?

Mr. MIRICK. He is very anxious to know the price which he is going to pay for his raw material. I admit that. But again, I would like to contend that is a merchandising matter, and especially in oats—we do nothing in oats, our company, and I have not the knowledge of merchandising conditions sufficient to enlighten you on that.

Senator MURPHY. All right. Have you concluded your statement?

Mr. MIRICK. I have; yes, sir.

Mr. STURTEVANT. I would like to make a very brief clarifying statement, if I may, Mr. Chairman. The questions of the committee this morning seemed to indicate that perhaps they thought that in our proposal to substitute margin control we were asking for the delegation of powers by Congress to our business-conduct committee, and I would like to call the attention of the committee to the fact that our proposal is the complete elimination of section 4 (a) from the bill, and that our margin proposal, as well as the records of the business-conduct committee, come under section 5 of the original act, which provides as follows:

> The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a contract market when, and only when, such board of trade complies with certain fixed requirements.

Now, we would insert our margin requirements under that section of the act so that it would not be a delegation of power; it would be that the board of trade could not get their license to operate in the contract market unless they did all these things.

Senator MURPHY. I think that overcomes—I say this as a first-class constitutional lawyer who never read a law book—it seems to me that it overcomes the constitutional objection to that provision. [Laughter.]

Mr. STURTEVANT. Gentleman of the committee, that concludes our testimony on the first four of our objections to the bill, and I would say that the balance of our testimony will be very much briefer than what we have presented today.

The next point of objection is in connection with licensing. Mr. Kirkland touched upon the legal aspects of licensing, but we have one factual witness on the same subject, and I will now call Mr. Coughlin.

STATEMENT OF JAMES J. COUGHLIN, CHICAGO, ILL., PRESIDENT OF THE BROKERS ASSOCIATION OF THE CHICAGO BOARD OF TRADE

Mr. COUGHLIN. Mr. Chairman and gentlemen, I have been a member of the Board of Trade of Chicago for a matter of 10 years and president of the Brokers' Association of that exchange for about 5 years. That is an association of some 300 brokers, trading in all of the various pits on the exchange.

I have also been a member of the Illinois bar for a matter of some 20 years and haven't been disbarred as yet, an unpredictable miracle for which I cannot give any satisfactory explanation.

I am going to ask the Senators to indulge me in the use of this manuscript. I don't ordinarily use it, but I will get through quicker, and I assume that will impress you favorably.

I propose to discuss for a few minutes those features of the bill under consideration concerning the licensing of floor brokers on the grain and other exchanges designated in the bill.

This question was discussed before the House committee in the spring of 1935, but because of the limited time at our disposal our presentation was wholly inadequate to give any legislative body the information it ought to possess before definitely and finally passing upon a matter of such vital concern to the persons affected. And I hasten to assure you that this is a matter of very vital concern and that our objection to the inclusion of the licensing provisions of this bill arise from something more than the natural disinclination of any American citizen to be perpetually policed.

Section 4e of the bill makes it unlawful for any person to act as a floor broker on any contract market without having first obtained a license from the Secretary of Agriculture, for which license the broker must make application according to the terms and provisions of section 4f.

By section 10 of the bill, to be known as section 8a of the Grain Futures Act, as amended, the Secretary of Agriculture is authorized to issue licenses to commission merchants and floor brokers in accordance with rules and regulations and in manner and form to be prescribed by the Secretary.

The second one is that the Secretary is empowered to enforce or require compliance with rules and regulations not specified in the bill as a condition precedent to the issuance of a license. The bill, in its present form, affords no protection against or appeal from the arbitrary refusal to issue a license or the imposition of unworkable or unreasonable conditions precedent to the issuance of such a license. I expect to discuss this feature of the bill more in detail later.

Lest there be any misunderstanding of the business and activities of a floor broker incidentally, I want to answer the question that Senator Frazier raised a moment ago. Let me point out that the broker is the exchange member who actually makes the various trades in the trading pit or ring on written orders that are transmitted to him, and in which transaction he has no interest other than the brokerage fee which he collects, which is fixed and determined by the rules of the various exchanges, which rules and regulations are rigidly observed under pain of severe penalty—and I want to discuss that a little as I get along, but for the purpose of Senator Frazier's question I believe he asked Mr. Kirkland with reference to the likelihood of a broker trading to a point that might amount to manipulation. I want to call to your attention to the fact that the broker is merely an agent, most frequently for an undisclosed principal and has no financial interest in the transaction he makes at all, other than the fee he collects for making it.

The orders are written on forms that are familiar to you. The actual principal is not disclosed to him, and he simply fills out that order and has no knowledge of the present position, if any, of the principal in the transaction, so that the broker is, as I suggested, simply an agent.

Let me also point out, what is also important, that all future trades are required to be made in the pit or ring designated for trading in the particular commodity by openly bidding or offering and which bids or offers are general and open for immediate acceptance to any other trader. The effect of this method of operation is that anything and everything a broker does in pursuit of his calling is under the immediate observation of anywhere from 10 to 200 other members of the exchange, so that any broker who doesn't follow a course of rectitude as a matter of conscience will almost certainly follow such a course out of fear of immediate detection.

I don't know what he could do that he should not do that would not be immediately discovered by somebody, because we are standing shoulder to shoulder, and the possibility of private negotiation or collusion or connivance is absolutely remote.

Getting back to the licensing provisions of the bill under consideration, I think it highly significant that, so far as I have observed, the only demand for these provisions comes from the men in the Grain Futures Administration which hope to administer them.

Theoretically, of course, the licensing power will be exercised by the Secretary of Agriculture. Actually I think we all understand that that work will be largely, if not entirely, committed by the Secretary to that Bureau and nobody doubts that the Bureau is responsible for the presence of these provisions in this bill. It has entertained the idea thus expressed for a considerable number of years.

In the consideration of any bill I think it is always useful to consider the proponents and the motives and purposes that inspire them.

It is a fundamental both of common sense and of law that the burden of proving a fact is upon him who asserts it. I do not assume that this Congress wants to make law merely to prove that it can. If these licensing provisions are to be considered seriously, therefore, they must be taken as assertions made by the Grain Futures Administration that there is an actual, subsisting necessity for this legislation. Both here and before the House committee the Bureau referred to sustained that burden of proof by showing exactly nothing in support of the assertion the licensing provisions necessarily imply. In a judicial controversy such failure would automatically result in a directed verdict.

Any claim of necessity, or even advisability, for this legislation must proceed from these premises:

First. That the exchanges have not in force and effect proper and sufficient rules for the governance of the activities of brokers; or

Second. That such rules, if in effect, are not vigorously enforced and observed; and

Third. That there are actual existing or threatened conditions that necessitate this legislation, and without which irregular and dishonest practices would prevail.

These licensing provisions, inasmuch as they do not pretend to be a revenue measure, cannot possibly be justified on any other grounds than those indicated, yet not one of those three conditions can be supported by any evidence of any dignity whatever.

If the Grain Futures Administration which want these provisions in this bill were able to show any facts that made the licensing of brokers either necessary or desirable, I don't have to tell you that they would have done so a long time ago both before the House committee and here. But they know that for many years, probably ever since their very inception, the exchanges have had proper and ade-

quate rules for the government and regulation of the brokers, and it knows, fully as well as I do, that those rules have been carefully observed and that the extremely rare instances of violation have been promptly and severely punished. These are facts that cannot be successfully challenged.

For what reason, then, is it sought to substitute a disciplinary power in the Federal Government for a system of self-regulation whose consistent effectiveness is beyond any reasonable criticism. I think I know the answer to that.

You will observe that by section 10 of this bill, to be known as section 8 (a) of the Grain Futures Act, as amended, the Secretary of Agriculture in theory, and the Grain Futures Administration in effect, is authorized to issue licenses to commission merchants and floor brokers in accordance with such rules and regulations as the Secretary, or more properly, the Grain Futures Administration, shall prescribe. There you have the answer. Undoubtedly those rules and regulations, whatever they may be, are in immediate contemplation already and include certain restrictions and impositions of which neither this committee nor the House committee have been advised of record, and of which we, the people most vitally affected, have neither been warned nor notified.

It may be argued, as opposed to this, that the language referred to is merely formal language and doesn't contemplate any enlargement of the specific language of the bill. My answer to that is that I am not prepared to accept the suggestion that the Grain Futures Administration is merely shooting a few arrows into the air in the expectation of bringing down any old kind of a bird somewhere along the line. I firmly believe their arrows are definitely aimed at specific targets but that for undisclosed reasons they have purposely refrained from indicating what restrictions and impositions they intend to establish as such rules and regulations. So that apart from the legal objection that this language might be construed as a delegation of legislative power to an administrative branch of the Government the fact remains that the provisions concerning licenses in their present form are incomplete.

The bill is not a finality. We cannot know what the law is until the Secretary has spoken, nor can we present any case either for or against these contemplated regulations and restrictions because we are not informed of what they are.

Nor does the bill specify any limits within which these regulations and restrictions shall be confined. The Department of Agriculture is given blanket authority in this respect to write its own ticket. I have no reason to believe that such authority will not be exercised to the limit of its apparent scope regardless of conditions.

To hope or expect otherwise could only be the result of an inexcusable indifference to matters and things of which we are only too well aware. I don't think anybody will quarrel with the suggestion that it is the natural inclination of departmental bureaus to expand rather than contract their fields of activity and to look upon the objects of their regulatory jurisdiction with suspicion rather than with a friendly and sympathetic attitude.

In the light of this undeniable fact, we feel that any attempt to subject us to the law of official ultimatum, and that's what it amounts

to, is not only unnecessary and unwarranted, but that it is so thoroughly repugnant to the American conception of a proper exercise of governmental power as to be wholly unconscionable.

So far as I know, nobody has appeared before this committee and claimed, let alone proved, that the rules of the exchanges as affecting the business or professional conduct of brokers are not adequate. It seems to me that proof of such fact ought to be the first requisite for any serious consideration of these licensing provisions.

I think that the Grain Futures Administration will admit that they are adequate. I do not know of anything dishonest, dishonorable, or in any way inequitable that a broker might do that couldn't be construed as a violation of some one or more of those rules, however ingenious or cautious he might be in his dishonesty.

Nor do I know of anything dishonest or inequitable he might do without leaving an easily determinable trail behind him. Our system of records and accounting have taken care of that.

You men aren't one-half so interested in maintaining honest and fair dealing on the exchanges as we are. It is our stock in trade, and I suspect that is one of the reasons why there is never any reluctance on the part of one trader reporting another if he believes there has been an irregularity.

It seems to me that that very fact alone would tend to destroy the real purposes of these licensing provisions, rather than subserve the declared purposes of the bill. Any such report is immediately investigated by a special committee appointed by the president of the exchange for that purpose, and if the committee finds that there is just ground for suspicion that a rule has been violated, the accused is speedily brought to trial before the board of directors and, if found guilty, he is suspended or expelled. And I hasten to assure you that for dignity, speed, and directness those trials are something to marvel at. I have participated in a number of them, and I also participated in courts martial, and if I were an accused and had my choice of either tribunal, I would take the court martial. It is an unusual case that isn't tried in a single session and at no expense to anyone.

No transcript of the proceedings is made; that is to say, no stenographic report, and professional counsel are not permitted to participate. Members are defended by other members, usually myself, never very successfully, I am sorry to say. And a further singular advantage is that the jury in such cases is not only disinterested but that it is a jury of men with expert knowledge of such questions as may be raised. They will be familiar with all the conditions surrounding market activity at the time of the alleged offense.

I cannot exaggerate the importance of this fact. Ours is a technical and, outside of our own ranks, a little understood business, and it is almost an impossibility to reproduce by verbal or other testimony those very factors which might, and very frequently should, determine guilt or innocence. Under our system of trial they don't have to be reproduced. The jury has first-hand knowledge of them.

Our directors are active grain men who are constantly familiar with what is going on in the pit, and facts and figures have for them a significance that might not occur to the Secretary of Agriculture or someone not familiar with them. Volume and range are of immense significance to people who understand them, but to people who

do not they might mean nothing, still that could very easily be the determining factor in a question of guilt or innocence, and under our system I think that we have got that problem completely solved.

In the bill under consideration it is—this is a system of judicial procedure in that the bill substitutes for the one that I have just outlined here—in the bill under consideration it is provided that if the Secretary of Agriculture believes that any broker has violated any provision of the law or any of the undefined rules or regulations he is authorized to prescribe or impose, he shall file with himself a complaint against such broker and proceed to try him, and if he finds him guilty, revoke his license for such period as suits him. The Secretary is the complainant, the prosecutor, the judge, the jury, and the executioner.

It reads like the revival of the star chamber. Yet, this is the system the Department of Agriculture asks you gentlemen to substitute for a system of self-regulation the effectiveness of which hasn't even been challenged.

The history of such trials as have been conducted by the Commission created by the Grain Futures Act is a history of prolonged, expensive trials. I participated in one that extended over a period of 4 or 5 weeks. The record consisted of nearly 2,000 typewritten pages and more than a hundred exhibits. No one seriously expects that such a record can be examined and studied by the Secretary himself.

That task must be committed to a substitute, the net result of which is that the accused doesn't even know who is trying him. And imagine such subordinate after his labor is ended telling the Secretary that the record does not support the complaint and that it should be dismissed, thus putting the Secretary in the position of being advised to repudiate written charges made over his own signature.

That is the sort of tribunal that these licensing provisions create, instead of setting up a fair and impartial tribunal, but not simply putting the Secretary in an embarrassing position, or putting him in any position where he cannot be fair and he cannot be impartial; he is simply under the almost conscientious duty of indicting under the complaint that he caused to be filed, and I submit—well, I won't submit it, but I want to say with reference to that one case I referred to just a moment ago—and this will only take a second—as illustrating what I have just been discussing, that case was begun in, I think, the spring of 1930; the hearings extended over a period of 4 or 5 weeks; it was submitted to the Commission on briefs; the Commission held it closely within its bosom for a matter of more than 2 years, went out of office without deciding it, and I think the present Commission now in office did decide it about a year after it came into office.

In other words, from the time the case was begun until it was concluded, a matter of some 3 years had transpired, leaving the unfortunate defendant in that continual state of uncertainty all during that period.

And I want to make one reference to the expense. I cannot conceive of a case brought under the provisions of this bill as we have been discussing them that could conceivably be defended for less, at the very minimum, than four or five thousand dollars. I don't know how a broker could retain competent counsel, go through a hearing

drawn out, even if it were only a week, have briefs prepared and written, send counsel to Washington to argue them, and go through all of the routine procedure that the bill sets up for any less than that amount. And I don't know of a single broker who ever defended himself before the board of trade that incurred an expense of more than $100. That is the difference.

I say that the mere filing of such a complaint would be an immediate conviction instead of a simple formal accusation based upon ex-parte representations, and if the accused doesn't recognize it as his death warrant, it will only be because he hasn't outgrown his infancy.

That is our objection to this provision. Put yourself in the place of such an accused person before you finally pass upon this question, and I think you will see it our way.

And let me call your attention to the fact that the broker is already under a license. His membership is a license. People don't just walk in off the street and trade in the pits. Our admission requirements are every bit as strict as the requirements of any bar or medical association. I think they are indefinitely stricter. The very nature of our business requires that they should be. We are just as alive to our responsibilities as any one in the Department of Agriculture, and we know better than anyone else that the reputation of our institution is the lifeline of our business and it doesn't require the unlimited and arbitrary power these licensing provisions vest in the Department of Agriculture to make us protect it.

This bill has been introduced as a regulation of interstate commerce, and presumably in aid of agriculture. These licensing ideas have been in the minds of the Grain Futures Administration for 7 or 8 years, and I have waited with a good deal of patience for somebody to point out or indicate the relationship of these licensing provisions to the removal of obstruction to interstate commerce, and I have waited for somebody to point out where they have put a 50-cent piece in the farmer's pocket, and my patience is still unrewarded.

That concludes my statement, Mr. Chairman.

Senator MURPHY. We will conclude the hearing for today and resume in the morning at 10 o'clock.

(Whereupon, at 5 p. m., the committee adjourned until 10 a. m., Wednesday, Apr. 22, 1936.)

TO AMEND THE GRAIN FUTURES ACT

WEDNESDAY, APRIL 22, 1936

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The committee met, pursuant to adjournment, in the committee room, 324 Senate Office Building, at 10 a.m., Senator Louis Murphy presiding.

Senator MURPHY. The committee will be in order.

Who is your next witness?

Mr. STURTEVANT. I would like to make a brief statement, if you please, Mr. Chairman. Yesterday we presented our first three points upon which we differ with the proposed legislation in principle, and we now desire to bring up our fourth point, the matter of the so-called rebate amendment proposed in the bill. This is contained in paragraph 2, on page 23 of the bill, and reads as follows:

> No rule of any board of trade designated as a "contract market" shall forbid or be construed to forbid the payment of compensation on a commodity unit basis or otherwise by any such cooperative association—

Which reference goes back to the prior paragraph and means any association engaged in the cash-commodity business having adequate financial responsibility, and so forth—

> to its regional or local member associations for business received by such cooperative association, provided no part of any such compensation other than amounts paid as dividends on capital stock is returned to producer patrons of such regional or local member associations otherwise than on a patronage basis and not more frequently than annually.

I will not read the balance of the paragraph, as we are not concerned with it.

Mr. Chairman, the grain trade believes and is convinced that this section of the bill was introduced for the purpose of allowing the Federated Cooperatives to pay compensation to their regional members for services rendered and that those funds so paid for services rendered might then be used by the regional for the purpose of paying dividends either upon a patronage or upon a stock basis or by paying rebates to the shippers of grain to the parent corporation. We object to any such legislation being enacted, contrary to the rules of the board of trade, contrary to every principle of fair dealing, because it would have the effect of putting competitors who are not granted this privilege out of business.

With your permission, I will call on Mr. Ellis to explain the wording of the bill as we understand it.

STATEMENT OF HOWARD ELLIS, LAWYER, CHICAGO, ILL.

Mr. ELLIS. My firm represents the board of trade of the city of Chicago, and I am here speaking for the grain committee on national affairs.

I think a word regarding the present rules and the rights of cooperatives to pay patronage dividends might clarify our objection to this feature. Our rules prevent, and so do the rules of every exchange, any of its members rebating commissions of brokerage paid them. That rule has grown up over a long period of time and is considered essential to all the exchanges. Cooperatives are allowed membership in the exchanges. That is provided for in section 5 (e) of the present Grain Futures Act. Those cooperatives are defined in the Capper-Volstead Act and may pay patronage dividends to their members out of earnings. The exchanges have no objection to that.

In addition, I think this provision of the bill is designed to permit a federated cooperative, national in scope, that has regional members, that doesn't have any producer members directly, to pay to those regional members, which are themselves cooperatives, certain budgeted sums for the surplus, as stated here, for education, promotion, which I take it is for the purpose of getting members. That is because the regional co-ops, cooperative associations, might not have enough of their own funds to carry out this work. At present it is proper for a federated cooperative to pay to its regional cooperative members budgeted amounts in their judgment necessary for these purposes. Under the present agreement with the Farmers National Grain Corporation, and I think this would apply to any other federated association of producers if they applied for membership, when those moneys are paid to the regional, if any portion of such moneys should not be expended for the purposes mentioned, the balance would at the end of the year be returned to the federated cooperative or would be retained and be accounted for in the next year's allowance. Under the present arrangement those funds could not be considered as earned to be used for the purpose by the regional of paying either the 8-percent dividend allowed by the Capper-Volstead Act or as the patronage dividend allowed by the Capper-Volstead Act.

In addition to that, it is our belief that this provision, as worded, would permit an actual rebate on commissions earned or on business sent through the local to the federated co-op of a certain amount per bushel, a direct rebate.

The grain exchanges would have no objection to including in the bill this provision if it is clearly worded so that the Regional Cooperative Association, first, cannot pay rebates; second, cannot use that money as earnings to pay the 8-percent dividend allowed by the Capper-Volstead Act and would not use it to pay patronage dividends as allowed by the Capper-Volstead Act. We believe that would be giving the cooperatives an unfair advantage, which is unnecessary for them to have.

An amendment to this provision has been suggested, I think, by the Secretary. I don't know the status of certain proposals the Secretary of Agriculture has made; I don't know whether they have

been sent to the committee or not. Could I ask the chairman if those may be discussed at this time?

Senator MURPHY. They have not been presented to me for my attention in any event. Have you received from the Secretary of Agriculture any comment on this bill as related to that feature of it, rebates to cooperatives?

The CLERK. Yes, sir.

Mr. ELLIS. In lieu of this provision on page 23, the Secretary, as I understand it, has suggested a change which I understand is as follows and which, as I understand, was designed to meet the objections of the exchanges which I have stated, and it being further our understanding that the Secretary does not wish to allow cooperatives to use these promotional funds to pay dividends, patronage, or otherwise, or to pay rebates. I do not know that that is true but it is our understanding that this language was designed for that purpose:

> No rule of any board of trade designated as a contract market shall forbid, or be construed to forbid, the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such cooperative association.

If one word was added, and I think it was the intent to make it plain, if the word "federated" is added in the last line of that before the words "cooperative association", I think the Secretary's meaning is made perfectly clear and the exchanges would not be opposed to this provision.

Senator CAPPER. Adding the word "federated", what would be the effect of that?

Mr. ELLIS. In the first part of this, Senator Capper, the words "federated cooperative association" is used and also the words "regional member associations." It was the Secretary's intention that the words "cooperative association" in the last line referred only to the farmer, and I think it is the position of the Grain Futures Administration that that meaning is plain here. We think it is not plain and there being a doubt about it, it is very easy to clarify it.

Senator MURPHY. The Secretary comments on this amendment which you have just read, suggesting that the entire subparagraph 2 be stricken and in lieu thereof there be substituted the amendment as you have read it, but with the omission of the word "federated", as you have stated. In comment thereon, he says——

Senator CAPPER (interposing). This is from the Secretary of Agriculture?

Senator MURPHY. Yes. He says:

> This change will qualify the intended purpose not to authorize the rebating of commissions by cooperative associations in violation of existing exchange rules although permitting federated cooperative associations to contract with and compensate constituent organizations for services rendered or to be rendered in connection with organization work, educational activities, or the procurement of patronage for the central operating unit.

Senator CAPPER. The amendment suggested by the Secretary omitted that word "federated"?

Senator MURPHY. The witness thinks that is an unintended omission on the part of the Secretary.

Mr. ELLIS. I believe it is, and from the way this thing is worded now, further than that I believe the words "cooperative association" means "federated cooperative association." There is some room for dispute. I take it that if we can make it plain and eliminate the dispute, we ought to do so.

Senator MURPHY. Still, there is considerable consequence attached here to the use of the word "federated."

Senator FRAZIER. What do you mean by "federated cooperative"?

Mr. ELLIS. A cooperative, national in scope, its membership not being producers but being regional cooperatives. Those regional cooperatives in turn have producer members or country elevator members, but the federated co-op is simply an association or combination of regionals. The language here—

provided no part of any such compensation—

That is, the unused portion of the compensation—

provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association.

That plainly means the federated cooperative association. It goes on—

or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such cooperative association.

The words "as a dividend on capital stock" means earned dividend.

In other words, if I understand this correctly, and I believe I do, what the Secretary has in mind is this: The federated cooperative association gives to a local, say, $50,000 for these purposes. All of that is not used for such purposes. The local cannot rebate back to its customers or pay a dividend to its customers out of that money unless and until the federated association pays a dividend to its regional members, and then the unused portion will be deducted out of that dividend, and then, of course, it will belong to the local. That, I believe, is his intention. I think undoubtedly—perhaps I should not say undoubtedly—but I think the language will be construed that way as he has it, but I do think it would be made much clearer if it were so stated.

Senator MURPHY. Will you proceed, please?

Mr. ELLIS. That is all I have to say, Mr. Chairman, on this subject.

Senator MURPHY. Thank you very much.

Mr. STURTEVANT. I shall call Mr. Brennan next. Mr. Brennan, I will ask you to confine your statement to 10 minutes.

STATEMENT OF JOHN E. BRENNAN, COMMISSION MERCHANT, CHICAGO, ILL.

Mr. BRENNAN. My name is John E. Brennan, of John E. Brennan & Co., commission merchants, Chicago, and I am a director of the Chicago Board of Trade.

Mr. Chairman, if I may be permitted to make a preliminary remark so the Senators will know where I fit into the picture as a grain man and what my duties are before I touch on the question, I shall be glad to do so, if that is permissible.

Senator MURPHY. Yes.

Mr. BRENNAN. If I digress a little, I hope you will pardone me; for while I qualify as a competent witness, I am not a professional witness.

I want to say, gentlemen, that at the age of 17 I had to leave school and go to work. I got a position as an errand boy in a grain commission house. To start with, on the board of trade we have diversified interests—wide diversified interests. One branch of the trade is a grain receiver. I will analyze a grain receiver. He is a man who takes care of the shipments of grain for the country. As I tell you, it was 38 years ago when I went to the business. I have been in it continually since. I have never owned a bushel of grain, either futures or cash, in my life. My efforts have been exclusively in the interest of the country shipper. Some Senator asked yesterday who here represents the producer. I plead guilty to that charge through the country grain man.

As a director of the board of trade and as a member of most of the prominent committees, there is not a resolution or a rule that is put up to vote on that I don't scrutinize at first and see how does it affect that man back in the country. That is my picture as a grain man.

This amendment to which you are directing your attention now has never had a hearing, as you probably know, either in the House Agricultural Committee or here. After public hearings were had on the bill, as you know, this was inserted in the bill. I am satisfied that if they had heard and knew the workings of this amendment they would certainly not have approved it, and we would not be here today. It is contrary to all business ethics and policy.

Senator MURPHY. Pardon me, Mr. Brennan; are you addressing yourself to the whole bill or to the amendment?

Mr. BRENNAN. Just section 6 (a), what we call the rebate, is all; that is 6a (2).

Senator MURPHY. That is on page 23.

Mr. STURTEVANT. That is the same section to which Mr. Ellis referred.

Mr. BRENNAN. I might have to go out of business; I might not be able to meet competition; but I hope I won't be legislated out of business.

On the board of trade, one of the most sacred and fundamental rules we have is the commission rule. Under the code, as I heard our worthy President state repeatedly over the radio and otherwise, what they wanted to eliminate was unfair business practices and chiseling. I think it was a wonderful motive.

Section 6 (a) (2) would permit rebates by cooperative organizations to local country grain shippers, which would be giving a bonus for business, which is in violation of the rules and regulations of the board of trade and contrary to the Grain Futures Act of 1922, which provides in section 5 (e) that—

* * * No rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperatitve association to its bona-fide members of moneys collected in excess of the expense of conducting the business of such association.

This regulation specifically states how a patronage dividend may be paid and certainly does not permit the refunding or rebating of a portion of the commission on a bushelage basis under the guise of a patronage dividend, either directly or indirectly.

Patronage dividends are provided for in the Capper-Volstead Act, and it clearly defines how, when, and the circumstances which justify the payment of same. To such payments no objection is here made.

This section is not for the purpose of securing for cooperatives an equality with other members of grain exchanges but, rather, to secure for these cooperatives advantages over other members.

We have operating in the Chicago market at the present time only one such cooperative organization, the Farmers National Grain Corporation. In order to acquaint you with the mechanics of this proposition I will use the Farmers National Grain Corporation as an example.

The charter of the Farmers National Grain Corporation provides that it may only pay out to its members on a patronage basis. Section 2 of article 4 of its charter provides as follows:

> Only cooperative associations meeting the requirements of the Capper-Volstead Act, approved February 18, 1922, and any amendments thereof, and which deal in grain shall be eligible to subscribe for or hold stock in the corporation.

Since, therefore, it is a Capper-Volstead cooperative, it is bound by the Capper-Volstead Act, and after paying the 8-percent dividend on its preferred stock, the balance of its profits, if any, may be paid on the patronage basis.

Again article 6, section II of the bylaws of Farmers National provides in part as follows [reading]:

> Any net profits of the Corporation in excess of the amount used for dividends or for the establishment of a reserve, as aforesaid, shall not be distributed to the stockholders of the Corporation on a patronage basis.

Therefore, Farmers National does not have the right to make gifts to its members or to pay out of surplus as it sees fit—it is required to conform to the patronage basis doctrine. I shall now quote from an Executive order by President Roosevelt in October 1933:

> EXECUTIVE ORDER DEFINING EFFECT OF CERTAIN PROVISIONS OF CODES OF FAIR COMPETITION UPON COOPERATIVE ORGANIZATIONS
>
> I, Franklin D. Roosevelt, President of the United States, do hereby order that no provision in any code of fair competition agreement or license which has heretofore been or may hereafter be approved, prescribed, or issued pursuant to title I of the National Industrial Recovery Act, shall be so construed or applied as to prohibit the payment of patronage dividend in accordance with law to any member by any bona fide and legitimate cooperative organization, including any farmer cooperative, duly organized under the laws of any State, Territory, or the District of Columbia of the United States, if such patronage dividends are paid out of actual earnings of such cooperative organization and are not paid at the time when such member makes a purchase from such cooperative organization.

Your patronage dividends are clearly defined in there. It was asked why that was called the federated cooperative. We call that the parent company. These regionals I could call the subsidiaries. Perhaps I am incorrect, they are an underying corporation.

What they are attempting to do is this, gentlemen, they are attempting to do something that the parent company is prohibited from doing. We have no objection, if the parent company—I am using these only for an example—if the Farmers National could have a profit after the year's business, we have no objection whatever to their distributing that money in any way they see fit, but we do object to them allowing during the year so much money to their regionals whether it is on a budget basis, as we are operating at the present time, or on a bushel basis, and a part of that money going back to the local country shipper. That is where the poison is, that is the competition that I can't meet. All we are selling in our line of business is a service. I bear the same relation to the country shipper that the lawyer does to his clients. We are selling him a service. If they can go back and give that country shipper $2 or $3 a car, where am I? I am out of the window. We don't object if they earn the money but we do if they don't. We don't object to the so-called educational and promotional purposes, whatever they are, because I have never gone into it and I don't know how far it goes, but we do object to having any of that money go back to the country shipper when the parent company has sustained a loss.

What they are asking here is that the Farmers National could lose half a million dollars in a year, and $200,000 of that loss be paid to a regional and a part of that go back to the shipper. I am willing to go along on an even basis. If I can't compete in rendering service after 38 years' experience, I will walk out of the picture gracefully, but for God's sake don't legislate me out of business.

Senator FRAZIER. Do you think the amendment the Secretary suggests is all right?

Mr. BRENNAN. Very fine. I read it only last night. It says "provided the cooperative has a profit." I presume that when the proponents of this bill get up tomorrow the regional will say, "We did have a profit." They might have gotten a hundred thousand dollars back from the parent Farmers National during the year on a half a cent a bushel. I am going to use a word I would not use only the honorable President of the United States has sanctified it. They will "chisel" off that $100,000 in whatever proportion they want and say they have got $50,000 earned and give that back to the shipper. Do you follow me on that? They have not earned anything. It is what they got from the parent company. Even though the parent company had a loss, they will take off what they call an amount for educational services and give it back. Under the President's recommendations, and I think he meant it, there can be no dividend, patronage or otherwise, to the local country shipper unless the parent company had a profit. In here they are defined as federated. If they have a profit, they can give the money back, all of it, if they want to.

I have no other business there; that is my sole business. I am selling a service the same as a lawyer to a client. I have built up my business and I feel I am entitled to go along with an even break. We want no favors, but for God's sake don't give the other fellow an advantage.

Senator MURPHY. Are there any questions?

Does that conclude your statement, Mr. Brennan?

Mr. BRENNAN. Yes, sir.

Mr. STURTEVANT. Mr. Hoit will address himself to the same section of the bill.

STATEMENT OF LOWELL HOIT, CHICAGO, ILL.

Senator MURPHY. Proceed, Mr. Hoit. You may put your paper in the record if you wish and discuss informally the various points you make.

Mr. HOIT. Since last evening I have been using the shears in cutting out things.

Senator MURPHY. Could we give you a little more time with the shears?

Mr. HOIT. I will use them as I go along. I will try not to duplicate too much anything that has been said.

Senator MURPHY. If you please.

Mr. HOIT. I am speaking in opposition to the proposed cooperative rebate amendment. I have been engaged in the cash-grain business in the Middle West about 45 years, 40 of which have been on the Chicago Board of Trade. I remember very well my experience in Chicago when I started doing business in that market in 1897, and in order to show the remarkable strides and reforms since that date I will enumerate just a few of the abuses that existed.

At that early date the Chicago Board of Trade had no fast rules against rebates to shippers and neither did the commission rule carry a penalty for its violation. Indeed, the trade could stimulate its business by making valuable presents to country shippers, and such an act was not considered dishonest, but was due to a different standard of business ethics then prevailing. It was not uncommon for a big customer to receive some valuable concession such as a safe for his office or an overcoat or transportation to one of the large cities. In one case a young man asked for stock in our company as a reward for influencing grain shipments from his father, who had several elevators. We could go out and solicit a man's business and agree with him as to whether we would sell grain for a commission of a quarter, an eighth, or a half a cent a bushel. I recall personally when I solicited business from a certain dealer. He was having his grain handled for $4 a car. I said I would handle it for $3.50. While this rebate of 50 cents seems small, yet I got the business.

This early period was one of recklessness and cut-throat competition which obviously resulted in no good to the producer or consumer or to the exchanges. Those having large amounts of business in the way of hedging could get it placed at exceptionally low rates. Those having large amounts of grain to store could get it stored for about half the rate that a small man having ten or twenty thousand bushels could obtain.

About the time of this deplorable and unsettled condition existed in the grain market, the small shippers were trying to do business under a terrible handicap caused by the railroads. Many railroads were giving large rebates, and besides were accepting the shippers' loading weights instead of the official or standard terminal weights. It was a marked advantage if country scales were a little off. The elder La Follette, it will be recalled, was one of the first champions of the cause of standard uniform railroad rates. I hold great reverence for this man and I consider it a distinct honor to have been invited by him to discuss the railroad situation as it related to rebates. He was particularly interested in the rebating of freight rates in grain and very graciously accepted an invitation to talk on this subject before the then very young Farm Grain Dealers Association of Illinois.

May I remark that a business practice of this kind in both commodities and transportation developed so often from the habits of short dealing and perhaps of dishonesty that are latent in human beings. They must often take advantage of their fellow man even to a degree bordering on dishonesty. Everyone of us now agrees that it was a poor way to conduct any business. In the case of grain, such practice was especially ruinous to small dealers. The members of the Chicago Board of Trade realized the inequity of this situation at an early date and before the Government passed a law to prevent rebating by transporation companies, it is my recollection that the board of trade passed rules by which every member had to charge exactly the same rates to every shipper of grain and the same rates to every man who hedged his grain and the same rates to every man who wished to store grain in a terminal elevator. Those rules were binding, and if a man violated any such rule he was brought up on the carpet and expelled or suspended if it was found that he did it intentionally. Since the inception of those rules they have been enforced by the board of trade the same as the rebate laws of the railroads have been enforced by the Interstate Commerce Commission.

It is the only fair way to do business in any industry. Incidentally, it is worthy of note that other reform measures have been inaugurated, but I shall omit further remarks in that connection in the interest of time.

As I understand the provision of the bill which you gentlemen have before you, it provides for rebating by certain parties and certain organizations doing business along certain lines. As I understand it, it provides that if a cooperative organization is a member of the Chicago Board of Trade it may violate the Commission rule and pay back to the shipper in the country a rebate of a certain amount per bushel of the grain which he ships. Mr. Brennan, who preceded me, outlined the complexities of that situation and gave you his ideas of the amendment under consideration, therefore I will omit a duplication thereof.

I must emphasize, however, that to abrogate the antirebate principle on the excuse of a benefit to cooperatives is unthinkable. I believe in cooperation. This is not an age when we believe in monopolistic cooperation or anything else that has a tinge of monopoly. If this provision allowing rebating by cooperatives is written into our laws, is there any reason why this idea should not be adopted in the field of transportation? Is there any reason why the cooperatives could not and would not then petition the Interstate Commerce Commission to allow rebates of 10 to 25 percent on all cooperative shipments? I understand the Supreme Court decided that the board of trade was a public utility, putting it in the same class, or much the class, with the railroads and telephones. The stability of public utilities, such as telephones and railroads, would be endangered if another similar class or type of business were allowed or granted preferential rates through legislative action or were allowed to grant preferential rates in such fashion. Thus it might be found that no avenue would be closed to business that sought favoritism in the name of cooperation.

I do not believe it is the purpose of you gentlemen to harm any great industrial enterprise that is being conducted for the best interests of the producers. It would be strange if there were not some men on the Chicago Board of Trade and other exchanges who were not entirely open and aboveboard and strictly honest. You find such men in all walks of life, in the church and in the lodge, and even in Congress. Nevertheless, I credit the great majority of legislative bodies with working for the best interests of all the people, and I believe it is equally true of our great industrial enterprises and of our grain exchanges. I do not believe that the Congress of the United States should compel any exchange to take into its membership a concern that will not abide by the rules that govern all other members. It is not fair. I do not believe it is good business.

It will not do to say that the grain exchanges have no place at the present time in our American industrial system and to simply wipe them out. Make laws, if you will, to regulate their operations, but don't kill them by inches. If there is no use for grain exchanges, they have no business existing; but if they are doing right in the conduct of their business, they should be allowed to exist unhampered by laws that are designed to help only one particular group and which are not in the interest of all of the people which the grain exchanges serve.

Senator MURPHY. We appreciate your statement very much, and we are especially gratified—and I think I speak in behalf of all the other Senators here—with the tribute you paid to the late Senator La Follette, for whom we all have the highest admiration.

Senator SHIPSTEAD. Mr. Chairman, I would like to ask a question. I have not been able to attend all of these hearings, and I would inquire as to what is the form of that rebate?

Mr. HOTT. Were you here when Mr. Brennan testified?

Senator MURPHY. Perhaps Mr. Brennan may best answer that question.

Mr. BRENNAN. Under the Capper-Volstead law and the act of 1922, it was provided how a dividend shall be paid. I am talking about the parent company. I used in my example the Farmers National. If they have an earning, they are permitted to send that back to a shipper in any form they desire, whether as patronage or otherwise. We do not object to that. We object to this set-up. They have a regional in the country that will get a rebate or bonus, whatever you call it, from the parent company. Say, they might get back, on a bushel basis, $100,000. They deduct from the one hundred thousand, say, $50,000 for their overhead. Then they give the other fifty thousand back to the shipper for the purpose of influencing his business, while the parent company, nevertheless, sustained a loss. In other words, the Farmers National in a year could lose half a million dollars, out of which $200,000 could go back to the regionals, and, although they sustained a loss, patronage would go back to the shippers to influence their business.

Senator SHIPSTEAD. How can you compete with that?

Mr. BRENNAN. We can't compete very long, and it will put a fellow like me out of business.

Senator SHIPSTEAD. Have you as yet sustained a loss?

Mr. BRENNAN. My office boy last year earned more money than I did. I have been in business 38 years. I have never owned a bushel of grain in my life. I am what is called a receiver of grain.

Some Senator asked yesterday who looks after the producer in the market. I pleaded guilty to that charge this morning. My business is to watch every rule and regulation of the board of trade and see how it affects the country shipper.

I forgot to say that in my 38 years over 50 percent of my business has been cooperative business. I have sponsored two members, two cooperative members.

Senator SHIPSTEAD. Where do they get the money to make up their losses?

Mr. BRENNAN. Their money came from the Government. They got about $6,000,000, or around that figure, at one-eighth of 1 percent. When I go over to the bank to borrow $10,000 I pay 4½ percent. I wasn't going to mention that, but you brought it up.

Senator SHIPSTEAD. You made a statement that they were doing business at a loss. I could not see how such a statement could be sustained.

Mr. BRENNAN. Their records show that. One year they had a loss of about half a million dollars and the other year it was $600,000.

Senator SHIPSTEAD. That money has to be paid back?

Mr. BRENNAN. Sometime. We all have to meet our Maker sometime. [Laughter.] I am merely quoting their records. Last year it was $500,000 and another year it was $600,000.

Senator SHIPSTEAD. You have no objection to the patronage dividend?

Mr. BRENNAN. Not if they earn it, or if they have a reserve, but not out of their capital. If they earn it, we are glad to have it go back and let them do with it as they will, but we don't like a dividend going back and influencing the shippers when they did not earn it.

Mr. STURTEVANT. Mr. Chairman, that completes the first part of our case on the matters in which we differ in principle with the proposed legislation. To all the rest of the bill we interpose no objections as to the objects sought. We do interpose objections as to the methods by which those objects are sought from a practical businessman's standpoint, and we can very briefly, except in one complicated instance, put those before you, I think.

The first thing we would like to have you consider is the Secretary's proposed amendment, next to the last item in the Secretary's letter, in reference to warehouse receipts. I will ask Mr. Ellis to present that to the committee.

STATEMENT OF HOWARD ELLIS—Resumed

Mr. ELLIS. My name is Howard Ellis, and I testified here before this morning.

The Secretary proposes the following: On page 19, following subparagraph 6, that is in line 7 on page 19, he proposes the addition of the following paragraph.

Senator MURPHY. Let's read subparagraph 6 in order to get what the story is.

Mr. ELLIS. Paragraph 5a on page 16 is the start of that section. It provides that each contract market shall do certain things, 1, 2, 3, 4, 5, and 6. Subparagraph 6 provides that each contract market shall—

> require that receipts issued under the United States Warehouse Act (U. S. C., such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated.

Then he proposes to add as subparagraph 7 that each contract market shall—

> require that all contracts of sale of any commodity for future delivery on title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes.

Senator MURPHY. Just read the Secretary's comment on that amendment.

Mr. ELLIS. I haven't that.

Mr. STURTEVANT. I have it here.

Senator MURPHY. The Secretary's comment on that suggestion is this:

> This additional provision is necessary to remove unfair discrimination against federally licensed warehousemen who desire to make their receipts tenderable on futures contracts upon the same terms and conditions imposed on State licensed warehousemen. This requirement is in accord with the spirit and purpose of the present United States Warehouse Act.

Will you now proceed? Do you approve of it or disapprove of it?

Mr. ELLIS. We disapprove of it.

Senator MURPHY. This is rather technical and, perhaps, you had better give us the story.

Mr. ELLIS. This provision would affect only the Chicago market, and it is because of the peculiar provisions of the constitution of the State of Illinois with respect to warehouses.

In the other contract markets, as I understand, the State laws provide that a warehouseman may elect whether he shall be under State regulation or under Federal regulation. In Illinois it is different. The Illinois constitution provides that every warehouse that is public—that is, that takes grain of different owners for compensation, in cities of 100,000 or over, and that applies to Chicago—must pay a license to the State of Illinois and be regulated by the State of Illinois. That is in the constitution, and it has been upheld as so interpreted by our courts.

If it were not for that constitutional provision the warehouseman in Chicago would in the majority of instances be glad to seek Federal license and not State license, but they have had to have a State license and State regulation up to this time.

If this bill is put into force and effect as worded, it will result in this: We are informed by the State of Illinois that it intends to enforce its law. If we comply with this section, if the Chicago Board of Trade complies with the section, it will have a suit brought against it by the State of Illinois for ouster of its charter. Its charter is a special charter granted by the State many years ago, and if the board does not comply with Illinois laws, it will be subject to a possible ouster of its charter. If it does not comply with this law and complies with the State law, it will be subject to the penalties of this act.

Some time ago, Mr. Chairman, a cooperative—it just happened to be a cooperative, it makes no difference whether it was or not—a member of the board of trade, leased an elevator and wanted the board to make it regular for delivery under the rules of the board of trade. The first thing we did was to look at the laws of the State of Illinois and we found that there is a law on the statute books as follows:

> No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public warehouse or which relates to the custody of grain in any private warehouse, or the use or negotiation of customers' receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission.

We filed a petition with the commission to change our rules, our present rules requiring that any warehouse which is to be made regular must conform to Illinois laws. We are required to do that under that law. We asked permission to change that so that we could regularize this house operating solely under a Federal license. The commission turned the board of trade down, and said that that could not be done, and the board of trade thereupon denied the application of this warehouseman. At that time the board of trade suggested to its members that a test case should be gotten up to determine whether or not the State had jurisdiction or the United States. It could have been tested out very easily if this warehouseman had stored a quantity of grain for an owner for compensation because it would have been in violation of the State law and a case could have been framed on that basis. It could have been taken up and tested through the courts and determined which government is supreme in this field.

The commission contended, in turning down the application, that the Federal laws with relation to warehousing have not been made preemptive of the field. In other words, the Federal Government, according to the commission, may regulate warehouses and so may the State. Therefore, if the commission is correct and both may regulate, this section of the act puts us in violation of the laws of either one or the other of the two governments.

I am not going to read any law, but I am going to read a Federal statute that is very brief. It was passed in 1931, I think. It was contended by the application that the Federal Warehouse Act does indicate that Congress has fully occupied the field and that the State has no right to legislate as to warehouses when the operator or owner of the warehouse seeks the Federal license and the constitution of the State of Illinois is void in attempting to cover that situation. You will remember that the original Federal act was only a cooperative act; that is, that the Secretary of Agriculture should cooperate with the State authorities in regulating warehouses. The original act did not contemplate that the Government would take over the entire field. In 1931 there was an amendment, and this is the amend-

ment which the applicant contended shows a preemption of the field by the Federal Government which excluded the State regulation:

> In the discretion of the Secretary of Agriculture, he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers, but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect.

It was contended by the applicant, "Why, this says plainly that when a warehousemen receives a Federal license the jurisdiction of the Secretary shall be exclusive and the State is ousted from all power." The Illinois Commerce Commission, to whom our application was made, said, "Well, notwithstanding that Congress may have intended to make the Federal laws exclusive when the warehouseman has a Federal license, it still has not occupied the field with its legislation, because the Congress has left to the warehouse the option as to whether or not it will take out a Federal license. Congress has not decided that it is going to occupy the entire field. Congress left it up to the warehouseman."

Senator NORRIS. Let me ask you this: Is it conceded now that if Congress did or does attempt to occupy the field that it excludes the State authorities and that the constitution and laws of the State of Illinois being in conflict with the congressional action, would fail? Is that conceded?

Mr. ELLIS. Yes, sir; it is conceded that if Congress occupies the field with respect to elevators in interstate commerce, and plainly so occupies the field, the State laws are nullified.

Senator NORRIS. Assuming now that Congress puts into the act the provision you object to, as suggested by the Secretary of Agriculture, wouldn't it follow by that act that Congress has preempted this field?

Mr. ELLIS. No, Senator; because the amendment proposed by the Secretary does not provide that Congress has occupied the field. It only provides that Federal warehouses, the receipts from Federal warehouses, may be used in settlement of grain contracts.

Senator NORRIS. Suppose it were necessary and felt desirable by Congress to include the Secretary's amendment. They would then have broadened it out so as to clearly show an intention to preempt this field? Would that still be objectionable?

Mr. ELLIS. I believe not, Senator. I think it would only be an occupation of the field with respect to a very few elevators throughout the country who are regular, which are already regular, or which would become regular.

Senator NORRIS. It has a peculiar application to your State of Illinois, on account of that constitutional provision, but it is assumed that notwithstanding that constitutional provision or any act which the legislature of Illinois may pass in pursuance to it, Congress could occupy this field and nullify all those acts?

Mr. ELLIS. That is very true. That is admitted. It is not admitted by the State of Illinois, but as a lawyer, I think that is correct.

Senator NORRIS. I should think that. I don't think there is any dispute about that legal proposition. It is a regulation of interstate commerce, and Congress can occupy that field if it wants to do so.

Mr. ELLIS. I would think that, but by this proposed amendment, Senator, I believe it has not occupied the field, because this amendment only relates to a very small number of Illinois warehouses.

Senator NORRIS. Let me ask you another question: Is it expensive or difficult to get licenses under the Illinois law or act?

Mr. ELLIS. No, sir.

Senator NORRIS. And it is not expensive or difficult to get them under Federal law, is it?

Mr. ELLIS. No, sir.

Senator NORRIS. If you were in the position of being up against this proposed amendment, what would be the objection to getting a license from State and Federal authorities both?

Mr. ELLIS. That is what we wanted this applicant to do. It would not do so. The reason for that is quite an involved one, but I think, in all fairness, I should tell you about it. The applicant claimed that it would not get a license both from the Federal and the State Governments because of our peculiar constitutional provision. Under that constitutional provision in Illinois, it has been held that a warehouseman, under Illinois law, a public warehouseman, may not store any of his own grain in his own warehouse nor may he store in his own public warehouse any grain in which he has even an indirect interest through a corporate set-up or otherwise, and until the last special session of the legislature, the storage of grain in which the owner had any interest at all was made a criminal offense. I think it is agreed by all warehousemen in Illinois, that they cannot profitably operate their warehouses without storing grain in which they have an indirect interest or a direct one. I don't know enough about the trade to say why that is true, but everybody is agreed on it, and the applicant took that position, too.

Heretofore, there has been a method of getting around the law which has been called "sending grain to store." There have been opinions of counsel that it evaded the law and that the warehouseman in that fashion could store his own grain in his own house, but it is not a satisfactory method of procedure, as anyone will agree. For that reason, this applicant did not want to take out a license under both Governments.

I should also add this: In the last special session of the legislature, the Governor of Illinois, who is alive to this situation and who, of course, is interested in saving the jobs of those who are engaged in inspecting and licensing warehouses in Illinois, proposed an amendment to the Illinois Warehousing Act, which amendment excluded any criminal penalty which might devolve upon a warehouseman for storing his own grain in his own house. How effective that will be——

Senator NORRIS (interposing). That is in the law now?

Mr. ELLIS. That is in the law now. Whether or not that can legalize the storage of grain in his own house under the Constitution is another question; in other words, it is a question of whether the constitutional provision is self-executing. We believe, and we have so advised some of our clients, that like the Federal law, if the owner of a warehouse has a subsidiary corporation and that subsidiary stores grain, it is now the law in Illinois that it not only is not a criminal offense but it has been legalized and we believe that the Illinois courts will so hold.

Senator NORRIS. You don't believe the constitution is self-acting?

Mr. ELLIS. I don't believe the constitution of Illinois is self-acting; there is no provision in the constitution to that effect. I believe that the constitution does not go as far as the courts did under the act.

Senator MURPHY. If the witness please, this suggested amendment is to remove unfair discrimination against Federally licensed warehousemen who desire to make their receipts tenderable on futures contracts upon the terms and conditions imposed upon State-licensed warehousemen by the State. It appears that the Federally licensed warehouseman is subjected to discrimination prejudicial to his interests in the tendering of these receipts issued under the United States Warehouse Act. Just how does that discrimination express itself?

Mr. ELLIS. It expresses itself in this way, Mr. Chairman, that unless the warehouseman also takes out a State license under the laws of the State of Illinois, as they now stand, any warehouse receipts he should issue would be invalid in the State of Illinois. Therefore, there is a discrimination against such a warehouseman, not on the part of the board of trade but on the part of the State authorities.

Senator NORRIS. Didn't this recent legislation attempt to remedy that situation? How would a man or corporation licensed under the Federal act do business unless he was also licensed under the State? Would that not be a burden on interstate commerce?

Mr. ELLIS. It has been held, up to now, Senator, that both governments may occupy that field, that the Federal Government has not fully occupied it.

Senator NORRIS. I see that at least, as far as the State is concerned, it can occupy a field if the Federal Government has not preempted it, but if the Federal Government passes any law to the extent of that law that preempts it, it would be superior, would it not?

Mr. ELLIS. Yes, Senator; but if I understand this correctly——

Senator NORRIS (interposing). Maybe I don't understand it correctly. I am not sure.

Mr. ELLIS. This proposal of the Secretary merely provides that boards of trade legalize receipts from warehouses having solely a Federal license. There is no intent in this act to preempt Federal regulation and exclude State regulation.

Senator HATCH. Would it not be true that this amendment would permit the Federal Government to occupy that field to that extent and therefore the Federal law would be superior to the State law?

Mr. ELLIS. I don't believe so, Senator, because this amendment of the Secretary is not a requirement that only Federal licenses shall be obtained. There is no attempt to exclude the State.

Senator NORRIS. Not directly, but doesn't it really have that effect? It provides that they must recognize it.

Mr. ELLIS. The board of trade must recognize it. Then when we recognize it and that Federally licensed house starts operating in Illinois as a public warehouse, somebody is going to be in an awful jam and have some awfully expensive litigation.

Senator MURPHY. Your point is that you are caught in a nutcracker?

Mr. ELLIS. That it it exactly.

Senator MURPHY. You have no selfish interest in it one way or another, and it is not related to the amount of trading you will do on the exchange?

Mr. ELLIS. Not a bit.

Senator MURPHY. It is just that one fellow is telling you one thing and another fellow is telling you another thing?

Mr. ELLIS. That is it exactly.

Senator CAPPER. Where does the interest of the producer lie in this conflict between the Federal and State Governments?

Mr. ELLIS. The interest of the producer and that of the applicant and that of the board of trade, I think, ought all to be one, namely, to get the thing settled as quickly as possible by a test case without putting the board of trade in the position of having its license revoked by the Federal Government, and its charter revoked by the State government.

Senator HATCH. Did you start proceedings in this case?

Mr. ELLIS. We started the case and notified the applicant we had started it, and requested the applicant to come in. We have also suggested to this applicant that if he will store a small quantity of soybeans or something for another owner, the State would take action to stop that practice. Then it could go right on up through the courts, through the Supreme Court of the United States, and we could get the question settled once and for all as to whether the State is going to regulate them or the Federal Government. The suggestion has been made, let the Secretary's proposal go into force and effect and then let the board of trade refuse to comply with it. Then let the Secretary revoke the license of the board of trade as a contract market and take that question up.

There are two objections to that: First, we don't want to run the risk of having the license revoked even on a test case; and, secondly, I am not at all sure that that test case would decide the question that must ultimately be decided, namely, which government is supreme in this field. I don't think that test case would necessarily decide that question.

Senator CAPPER. Would you mind telling the committee which government you think is supreme?

Mr. ELLIS. Which one I think? Well——

Senator MURPHY (interposing). Word might get back home. [Laughter.]

Mr. ELLIS. It is my personal opinion, although I have not so advised the board of trade, and the board of trade has taken no official action on it and I don't want to put them in a nutcracker, but it is my personal opinion that the Federal Government has not occupied this field to the exclusion of the State. I say that because the first case that went up on the doctrine of public interest was Munn against Illinois and it decided that our warehouse laws were sound. From that time forward it has been a historic case, and I don't believe it was the intention of Congress to exclude all States or the State of Illinois from the regulation of these houses. I don't believe the Senators and Representatives would have done that without a full hearing, and there was not a full hearing, and it would be, of course, a very serious and important step. My opinion is that Congress did not intend to occupy the field to the exclusion of the State.

Senator SHIPSTEAD. If a warehouse takes out a State license, that State under which it is licensed may issue regulations and rules?

Mr. ELLIS. Yes.

Senator SHIPSTEAD. Are those rules and regulations quite uniform as issued by the States or is it important that there be uniformity in them?

Mr. ELLIS. They are quite uniform and—I think I am correct in saying this—there is excellent uniformity in applying Federal standards. I think I am right about that. So there has been no conflicts other than this one conflict between the jurisdictions that I know of, Senator.

Senator MURPHY. Does that conclude your statement with respect to this proposed amendment?

Mr. ELLIS. Yes, sir.

Mr. STURTEVANT. I would like to make it very clear to the chairman and to the committee, so far as the board of trade is concerned, that we do not object to the use of Federal licenses. Many of our elevator warehousemen, of whom I am one, would prefer to operate our houses as a federally licensed warehouse rather than a State licensed warehouse if it could legally be done. I will use Mr. Ellis on the next point.

Our next point of objection to the bill is section 6a on page 22. This is a section of the bill which, if enacted into law, would prevent the board of trade from suspending or expelling cooperative organizations except with the approval of the Secretary and after a hearing. The board of trade has no objection in principle to cooperatives having a right to appeal from the findings of the board but we think the board should try the case first. In other words, we think the board should try the case de novo and then let an appeal be taken to the Secretary rather than forcing us to come down here and try the original case before the Secretary.

Senator MURPHY. Will you proceed on that point?

Mr. ELLIS. Yes. On page 22, line 19, it provides that no cooperative may be excluded from membership on the board of trade for violating its rules or the law unless after hearing held upon at least 3 days' notice subsequent to the filing of complaint by the board of trade.

As we construe that, the board of trade could not proceed to hear a complaint and take evidence unless it had first come to Washington and received the consent of the Secretary at a hearing before him to proceed in the matter. We think that is very unworkable and inexpedient. If the cooperatives are to have an appeal, and I think there is no serious objection to that, it should be after the hearing is conducted by the board of trade and the appeal to the Secretary may operate as a supersedeas. Otherwise, we will be burdened down here with complaints on which nobody will be found guilty.

Senator NORRIS. As I understand that, the only objection you have is that you don't like the procedure outlined in the bill.

Mr. ELLIS. Yes, sir.

Senator NORRIS. Have you a suggested amendment?

Mr. ELLIS. Yes, sir; I have here an amendment which would change that and permit the board of trade first to try the cooperative. The appeal would operate as a supersedeas on any order the board might enter, and then the Secretary could review the matter, as is done in court.

Senator NORRIS. Would your suggested amendment provide for the giving of bond or anything of that kind?

Mr. ELLIS. No; I don't think that would be necessary.

Senator NORRIS. Suppose you read your proposed amendment.

Mr. ELLIS. The whole thing?

Senator NORRIS. Not necessarily. First, I would suggest you read from the amendment the part you would strike out. I suppose your amendment strikes out and inserts, does it not?

Mr. ELLIS. The way we have drawn this up, we struck out the whole thing and rewrote it.

Senator NORRIS. You mean all of 6a?

Mr. ELLIS. Yes; but our amendment really doesn't strike it all out. It reinserts it again. We object to this provision: "No board of trade which has been designated as a 'contract market' "—I am reading from the first part of the section 6a, on page 22 of the bill—"shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash-commodity business", and so forth; then skip down to line 16, "unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after the hearing held upon at least 3 days' notice."

In lieu of that language, beginning at line 16, "unless such board of trade is authorized by the Commission to exclude", we have put in this:

> if such cooperative association of producers shall be expelled or suspended from membership in and all privileges on such board of trade, it shall have an appeal to such Commission, during the pendency of which appeal such association shall retain and exercise its membership privileges.

Senator NORRIS. The rest is all the same?

Mr. ELLIS. The rest is practically the same, but I had better check up on it before I say it is all the same.

Senator NORRIS. As I understand it at first blush here, your objection comes from the fact that under your construction they would have to get permission of this Commission before it could exclude them?

Mr. ELLIS. Before it could even try them.

Senator NORRIS. When you made that application for permission to the Commission, wouldn't that be the real trial? And if the Commission allowed you a hearing, wouldn't that really end it? The trial would take place upon your application to the Commission to put this member out of the board of trade or suspend him.

Mr. ELLIS. I think that would be the result of it.

Senator NORRIS. Wouldn't that be just as easy to try it that way?

Mr. ELLIS. No sir; because it would probably mean our coming down here to Washington and going through a trial down here; and in many instances those complaints are not allowed.

Senator NORRIS. It seems to me this would shorten it. If you appeal as provided under your proposed language, then the trial would come on afterward and be down here just the same, would it not?

Mr. ELLIS. No; the appeal would be on the record made at the board of trade, and it would be condensed. You would not necessarily have to bring all those witnesses down here. In the second

place, a great many of these people are dismissed after the trial. In this procedure, every complaint that came up relating to a cooperative would have to come down here.

Senator HATCH. On that point, I have just been reading that language; I do not see that the language there prevents the trial. Why couldn't you go ahead with the trial and then, before your judgment of expelling him was entered, proceed with the hearing of your testimony before the Secretary or the Commission?

Mr. ELLIS. Because, Senator, if you will look at the language in line 19, on page 22, it says no contract market shall exclude from membership—

> except after hearing held upon at least 3 days' notice subsequent to the filing of complaint by the board of trade.

Senator HATCH. I was reading that. I notice in the first part the prohibition is that the board shall not exclude from membership, that no board shall exclude from membership.

Mr. ELLIS. That is it.

Senator HATCH. I do not see why under that you could not go ahead and have your hearing. You might determine that you should not exclude him, therefore, there would be nothing to go before the Commission with; but if you determined he should be excluded, you could then give your 3 days' notice.

Mr. ELLIS. I don't believe that is the intent of this, and I certainly don't think it is worded that way. You may be right.

Senator HATCH. From the language of that, it strikes me that it could be done.

Mr. ELLIS. It certainly ought to be clarified if that is the meaning.

Senator HATCH. How would such a procedure as that be——

Mr. ELLIS (interposing). Please say that again.

Senator HATCH. Suppose the complaint is filed and you go ahead and hold your hearing. You determine that the cooperative should be expelled. Then you give your 3 days' notice, as prescribed here, and go before the Secretary with your transcript of the testimony and your proposed judgment.

Mr. ELLIS. I have never discussed that with my clients, that is a new one. I would want to discuss it with them.

Senator HATCH. It strikes me that that section could be interpreted that way.

Senator NORRIS. I agree with you in that. I think you could put that interpretation upon it. I don't know that that would shorten it any. At least, under this language, you couldn't get him out until you had permission from this Commission. You could take any preparatory method of procedure you wanted to, I should think, and see whether or not you wanted to ask for that permission. You might be satisfied after the trial that you were not entitled to have him removed, and you would want to drop the matter.

Mr. ELLIS. If that procedure is possible under this language, let me talk with my clients.

Mr. STURTEVANT. We are prepared to state now that we do not object to that proposal if the language is clarified so that it is clear that we have a right to have the trial in the first instance.

Senator MURPHY. It appears to me that you have the right to trial in the first instance, but you cannot by your order effect the expulsion of this trader until the Secretary of Agriculture approves it.

Mr. ELLIS. I am just wondering if this language is plain enough to make that certain.

Senator HATCH. I think it is. Suppose you hold your trial and find the man not guilty; there is nothing to go before the Secretary with.

Mr. ELLIS. If that is the way it is understood, all right. We did not so understand it.

Senator MURPHY. You shall not exclude from membership unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least 3 days' notice subsequent to filing of complaint by the board of trade. In other words, as in the case of a member of your own organization other than a cooperative, you can proceed with his expulsion from the board of trade. In the case of a cooperative, the premise being that you might have prejudice against the cooperative, you can't expel it until the Commission shall have given you the authority to expel it. You make your complaint to the Commission, setting up your conclusions in respect to its dismissal, but it is for the Commission to determine whether or not that exclusion order shall stand.

Mr. ELLIS. We had felt that it was not plain and should be clarified.

Senator NORRIS. It seems to me that is right. The person against whom you are proceeding would know that before he could be expelled you would have to get this permission.

Senator MURPHY (reading):

> Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges.

Mr. ELLIS. Let me make this suggestion: Would the trial before the Secretary—and again I am asking questions and shouldn't, but I am doubtful whether the trial before the Secretary would be de novo or would be on the testimony adduced before the board?

Senator NORRIS. I think there would not be any doubt but what the member that you allege has offended would have a right to produce his evidence before the Commission, otherwise there would not be much use.

Senator MURPHY. It is intended that it shall review the action of the board of trade.

Senator HATCH. I think the law would permit you to take your transcript before the Commission, because that is the basis of your request, but I think your hearing would be de novo.

Mr. ELLIS. Then we are met with this proposition: If the member against whom we are proceeding adduced no evidence at all before the board, we might have perfectly sufficient evidence to exclude him from membership, but he refused to introduce a thing, and we would have to come down before the Secretary, and he would spring a lot of evidence upon us which we had never heard before.

Senator NORRIS. It would be like an appeal from the court of a justice of the peace. If a case is appealed, it is taken into the higher court, where it is tried de novo. You do that same thing in any litigation that comes up under any law.

Mr. ELLIS. No, Senator; not in a criminal appeal; no additional evidence can be adduced in a reviewing court.

Senator NORRIS. No; if you apply it to a criminal proceeding, the first hearing before the board would be comparable to the preliminary hearing that takes place. The defendant has a right to offer no evidence whatever if he so wishes, and he can be bound over to the higher court, and on the trial he then can introduce any evidence that is relevant.

Mr. ELLIS. Under this suggestion, the hearing before the board of trade is practically an inquest to determine whether or not there shall be a trial in Washingon, and he board of trade cannot try its own offender.

Senator HATCH. The board must conduct its hearing in the first instance before you could give the 3 days' notice. You couldn't give the notice that you were going to expel this member before the complaint was filed, because you don't know whether you are or not.

Mr. ELLIS. You have clarified the matter to me and as you have now clarified it, of course, we would hold a hearing and take testimony and then take the evidence down to the Commission and ask leave to expel the member, if the evidence showed that he was guilty. I should think, however, that it ought to be on the evidence adduced before the Board, that the member ought to be required to come before the Board and rebut the charges just like in any civil or criminal case, otherwise——

Senator MURPHY. If otherwise, it will be pro forma proceedings and he can ignore it altogether, assuming that the set-up is against him, and that he hasn't a chance anyhow.

Mr. ELLIS. Yes.

Senator NORRIS. The way you would want it would be to provide in effect that this Commission here is going to act like the Supreme Court?

Mr. ELLIS. That is it exactly.

Senator NORRIS. I doubt whether that is the intention really of the act to do that. The explanation seems to me to be clear that this Commission should act under the evidence. Of course, it might result and probably would in most cases in the offending member offering all the evidence he expected to rely on in the original case and bringing it then before the Commission on the record that was made. That is possible and probably would be the usual practice.

Senator MURPHY. Do you think we ought to specify that in the act, Senator?

Senator NORRIS. Oh, no; I shouldn't think so. I wouldn't want to take away from the offending member the right to have a trial, if he wanted to have it, before the Commission, any more than I would want——

Senator MURPHY (interposing). Still, if he had a trial before the Commission on the basis of the record as presented——

Senator NORRIS (interposing). It would require him to produce all his evidence in a different place.

Senator MURPHY. I was thinking that the original hearing before the board of trade wouldn't amount to anything; he probably wouldn't present any evidence at all.

Senator NORRIS. I don't know; I am inclined to think that evidence would be presented, as a rule. I am thinking of the experience that every lawyer has. Maybe you haven't had it; maybe you haven't tried cases before the justice of the peace [laughter], but the ordinary lawyer has, and I know that the practice almost universally is that you try your case just as hard there as you do in court anywhere; and if either party is not satisfied with the result of it, there is a provision in the statute for an appeal to a court of general jurisdiction, usually called district courts or circuit courts, or whatever the statute may call them, and there you try the case de novo and go over all the same ground again and either party has the benefit of any new evidence that may be suggested by the first trial.

Senator MURPHY. The question is whether the co-ops would look upon this trial before the board of trade as a kangeroo court rather than a justice of the peace court. [Laughter.]

Senator NORRIS. They might look at it as a prejudiced court. They might say, "The board of trade has made charges against us and the board of trade has tried us, but we are not willing to let that be final. We want to try it in an unprejudiced court."

Senator MURPHY. As I understand it, the board of trade doesn't want anybody to be prosecuting witness, judge, and jury. [Laughter.]

Mr. ELLIS. Let me make a suggestion with reference to the Senator's statement about the trial before the justice of the peace. I have had a lot of them. However, I think the board of trade at its trials occupies a little different position from the justice of the peace, for this reason: The courts have held time and time again that the action of the board on its own membership, which it is given by special charter that right to try its own members and exclude them, is something with which the courts won't interfere at all. It is quite a prerogative, and one of which we are very proud and exercise with care. Just as the chairman said, I think you are not only relegating those trials to the status of a trial before a justice of the peace, but to that of a kangaroo court.

Senator CAPPER. Where do you get that right in your charter?

Mr. ELLIS. From the State of Illinois. It has given us complete jurisdiction over our own members to try and expel them.

Senator SHIPSTEAD. You have a right to take them for a ride if you want to?

Mr. ELLIS. That is right.

Senator HATCH. Would this be the only exception under your rules?

Mr. ELLIS. That is right.

Senator HATCH. That would be the only case in which you could not expel?

Mr. ELLIS. Yes. We are perfectly willing, if we are allowed to have the trial, with the member under charges having the right to call witnesses and be heard fully, to have that record go as it does in trials before justices of the peace——

Senator NORRIS (interposing). It seems to me we have got a very clear understanding of what the difference is. We might pass on.

Mr. ELLIS. There is one other very important point under this section that I can mention very briefly. Whenever a member of the board of trade becomes insolvent it is necessary to have him stop trading immediately. Otherwise he could continue to make contracts and throw the whole machinery out of gear. Recently we had a member who became insolvent and a court entered an order which we felt might allow him to continue trading—this was under 77B, the Bankruptcy Act, which has never been passed upon. The board of trade cannot continue operations if one of its members becomes insolvent, and it matters not whether it is a coop. or anyone else. That act makes no provision for a cooperative association that fails to meet its obligations or that might fail to meet its obligations. I think a cooperative or anybody else should be excluded from the board of trade in the case of insolvency, and if there were an appeal there should be an exception in the case of insolvency or inability to meet commitments. Otherwise, in the 3 days allowed by this section, while we were seeking permission to expel the member, the board would have to close its doors.

Senator HATCH. Your amendment takes care of that in the last sentence, I think.

Mr. ELLIS. Yes, sir.

Senator NORRIS. Read it, please.

Mr. ELLIS (reading):

Nothing herein contained shall prevent or be construed to prevent a board of trade from summarily suspending from membership in and all privileges on such board of trade any cooperative association of producers which is or shall be unable to meet its financial obligations or is or shall be insolvent.

Senator SHIPSTEAD. That applies to every member?

Senator NORRIS It already applies to everybody except cooperatives.

Senator MURPHY. After this discussion, would you want to reform your suggested amendment?

Mr. ELLIS. I should like to do that.

Mr. STURTEVANT. I can file it right now.

Senator MURPHY. You did not understand. I said the suggested revision of the amendment.

Senator NORRIS. The amendment on the insolvency matter would be provided by the sentence you just read.

Senator MURPHY. He may desire to submit a modified amendment otherwise. I suggest you separate them.

Mr. STURTEVANT. Will you present to the committee the suggestion we ask for as to legalization of contracts?

Mr. ELLIS. On page 13, after line 2, add the following new subparagraph:

Any contract for the purchase or sale of any commodity for future delivery made on or subject to the rules of a contract market by or through a futures commission merchant in conformity with this act shall be valid and enforceable in all jurisdictions.

The reason for that is that if this amendment passes the boards of trade will be so regulated that Congress, the Federal Government, should legalize those contracts; whereas now each State has laid down varying rules as to whether futures contracts are legal and enforceable or whether they are gambling or not gambling. These additional safeguards we have thrown about the handling of futures contracts and we should like very much to have Congress legalize them so that there will be one rule applied to them throughout the United States.

Senator CAPPER. Who would likely oppose a position of that kind?

Mr. ELLIS. Senator, I don't believe anybody would oppose it. I am not sure whether there are any opponents here or not. I believe the Grain Futures Administration is not itself opposed to that amendment. That is my understanding.

Senator HATCH. It will be opposed by all persons who oppose the principle of trading in futures.

Mr. STURTEVANT. The next point we wish to present to you, Mr. Chairman and members of the committee, relates to page 10 of the act, beginning at line 16, paragraph 2. This is the proposed provision of the act which requires commission merchants to segregate or treat as trust funds the funds of customers. We assume that that is for the purpose of protecting the customer, so that he may be sure of getting his money back. With that principle we have no quarrel and we are perfectly willing that an act should be drawn which shall correct whatever evil practices may exist and which will protect the customers' money. We do think that the method proposed is impractical and unworkable and Mr. Uhlmann will proceed.

STATEMENT OF RICHARD F. UHLMANN, PRESIDENT OF THE CHICAGO BOARD OF TRADE CLEARING CORPORATION, CHICAGO, ILL.

Mr. UHLMANN. My name is Richard F. Uhlmann; my home is in Chicago; I am president of the Chicago Board of Trade Clearing Corporation, which is the financial arm of the institution. I am also secretary of the Uhlmann Grain Co. We operate warehouses at terminal markets. We handle grain, we distribute it. In former times we were exporters and, in fact, handled practically every phase of the grain business in the country.

Mr. Chairman and Senators, I desire to address myself to article II of section 4 (d), on page 10, line 16 to 25, and page 11, line 1 to line 11. The very evident intention of this article is that a futures commission merchant shall by its formula keep himself at all times in a position of ability to liquidate all of his obligations to his customers, with which intention my associates and I are heartily in accord. It is my personal opinion and the opinion of other practical commission merchants with whom I have discussed this article that it is practically unworkable, uneconomic, and does not afford to the customer the security which it evidently intends. I will first touch upon its practical unworkability; the language of lines 16 to 21, and part of line 22 on page 10, provide that a commission merchant shall treat and deal with all money securities and property received from a customer to secure the trades or contracts of the customer as belonging to the customer. I have been advised by counsel that discreet interpretation of this language should cause the commission merchant to consider himself as being practically in a trust relationship to the customer on such money, security, and property.

In considering this article I have discussed with Chicago bankers the feasibility of handling customers' funds under a trust arrangement and have been advised that it is wholly impractical and impos-

sible to create a trust relationship for funds so entrusted to the commission merchant. They have also advised that if there were a segregation of these funds into a separate bank account, such funds would not in event of insolvency be available to any customer, and if the commission merchant had borrowings from the bank that were partly secured or wholly unsecured the bank would appropriate for its protection such part of such segregated deposits as was necessary to liquidate the borrowers partly secured and unsecured indebtedness to the bank.

Our counsel advises me that in the event of insolvency it is extremely doubtful that the customer could sustain the position of a preferred creditor for any part of the segregated bank account.

For the reasons I have given I am convinced that such a plan of segregation is ineffective for the customer's protection and is therefore impractical and uneconomic, and that the intended protection to the customer is not in fact afforded.

On page 10, beginning with line 22 and continuing to the first colon of line 1, page 11, this article provides that money, securities, and property deposited by a customer with a commission merchant shall not be used to margin or guarantee the trades of another customer or to secure or extend credit to another customer.

Insofar as the grain-exchange members are concerned, this provision is fully met by rules and the detailed checks on members' financial conditions by the business conduct committee's auditors. Beginning with the word "provided", on line 1, page 11, to line 11, page 11, certain apparent flexibility is given to the commission merchant in the use of customers' money, securities, and property, but notwithstanding the apparent flexibility of this language, our counsel advises me, as previously quoted, that discretion should cause the commission merchant to maintain a trust relationship which I previously pointed out as impractical.

Since coming to Washington I have read and considered a typewritten copy of what I am told may be offered as a substitute for article 2, section 4 (d). This also requires that customers' money must be treated as belonging to the customer, and is therefore impractical because of its implied trust relationship, as I have previously outlined. It more definitely provides for the segregation of customers' funds, but even so, in my opinion it does not afford the customer the protection intended for the reasons I have given in discussing article 2 as written in the proposed bill. It also provides for some apparent flexibility, but again it meets our counsel's opinion that a trust relationship is implied, which I believe to be impractical. In the beginning of my statement I stated that my associates and I are heartily in accord with the intention expressed or implied in article 2 of section 4 (d) that the commission merchant shall at all times be in financial position to liquidate his obligations to his customers. Therefore, if there is to be legislative action to this end, we desire that it be practical, economic, and genuinely protective of the customer. In order that we might offer for your consideration suggestion that would fully meet these conditions, we have, during the past 6 days, had frequent discussions with accountants, lawyers, commission merchants, and the staff of the Grain Futures Administration to obtain the benefit of their counsel in drafting such suggestions, and I now offer you a suggested substitute for article 2, section 4 (d), which has been carefully prepared by experienced, technical, and practical men, and which we sincerely believe to be practical, economical, and genuinely protective of the customer.

Senator MURPHY. Did I understand you to say that this amendment you are about to suggest has the endorsement of the Grain Futures Administration?

Mr. UHLMANN. I wouldn't go so far as to say that, Mr. Chairman. We have discussed this in several meetings, but we can't speak their minds.

Senator SHIPSTEAD. Have you a copy of that amendment that you proposed?

Mr. UHLMANN. The proposed amendment I now offer for the record. I have it here.

Senator CAPPER. What does it do?

Mr. UHLMANN. We have agreed that we must at all times keep ourselves liquid, and we want to do it in a manner that we think will at all times safeguard the interests of the customer.

Mr. STURTEVANT. Might we have that amendment read?

Mr. UHLMANN. I have it here, if you would like it read.

Senator MURPHY. Go ahead and read it.

Senator NORRIS. That commences on line 16, page 10, does it not?

Mr. UHLMANN. I would like to have a draft of the law. I know it almost by heart, but——

Senator NORRIS. In other words, you strike out, on page 10, beginning with line 16, all down through and including line 14 on page 11?

Mr. UHLMANN. That is correct.

Senator NORRIS. And insert this proposal in lieu of it?

Mr. UHLMANN. That is correct.

Senator NORRIS. All right; read it.

Mr. UHLMANN (reading):

Such person, whether a member or a nonmember of a contract market, shall at all times have and keep available for the liquidation of all customers' accounts and all other current liabilities (a) money in cash or on deposit with a bank or trust company; (b) or money and/or approved securities with a clearing organization of a future exchange or a national securities exchange.

Senator MURPHY. Who will approve these securities?

Mr. UHLMANN. Mr. Chairman, at the present time on boards of trade we are required, according to the size of our business, to buy capital stock of the clearing corporation. That stock is endorsed and left with the corporation as collateral, and we use that as part of our market in protecting open trades.

Senator MURPHY. Proceed.

Mr. UHLMANN (reading):

(c) Or on deposit with a member of a futures exchange or a national securities exchange when the deposits with such member are to secure such person's transactions with such member; (d) or stock of a clearing organization of a futures exchange or a national securities exchange to the extent that such stock is accepted by such clearing organization for margin purposes; (e) and/or approved securities and/or approved properties the current loan value of which, combined with items (a), (b), (c), and (d), shall at all times equal or exceed the equities in all customers' accounts and all other current liabilities. Approved securities and approved properties shall consist of the following:

(a) Securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect

interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors.

Senator MURPHY. Would you specify a few such organizations now?

Mr. UHLMANN. Mr. Chairman, we had in mind simply Federal liens, treasurer's certificates, and so forth.

Senator MURPHY. Federal obligations?

Mr. UHLMANN. Federal obligations; and I think this is the phraseology generally used [reading]:

(b) Securities which are direct obligations of or obligations guaranteed as to principal or interest by a State or any political subdivision thereof or any agency or instrumentality of a State or any political subdivision thereof or any municipal corporate instrumentality of one or more States.

(c) Securities listed on a national securities exchange.

(d) Warehouse receipts or bills of lading covering property traded in on a futures exchange.

(e) Other securities to the extent a National or State bank has current loans outstanding to such person on such other securities as collateral.

Senator MURPHY. That subparagraph (e) says, "Other securities to the extent a National or State bank has current loans outstanding to such person on such other securities as collateral." Just what does that mean?

Mr. UHLMANN. We intend to put this to a test. There is some very fine collateral which is not quoted on national exchanges, and in order to test the actual value of that collateral we require that it be taken to a bank and loaned again.

Senator MURPHY. Perhaps that language could be clarified. It is not quite clear as it is. Proceed, please.

Mr. UHLMANN (reading):

(f) Accounts and bills receivable fully secured by the deposit with such person of approved securities or property of the class or classes enumerated above.

Senator MURPHY. Do you get much collateral other than cash in connection with your business?

Mr. UHLMANN. We do at times; yes, sir.

Senator MURPHY. I suppose it is your practice to put up your stock in this national association with that?

Mr. UHLMANN. With the clearing organization. We are only permitted, according to the present bylaws, to put up either cash or in lieu thereof Government obligations, either at par or at current market value, whichever is lower.

Senator MURPHY. Can you put up your stock in that association?

Mr. UHLMANN. It is up at all times and applies toward margin. It is endorsed over——

Senator MURPHY (interposing). That is the whole function of that corporation in which you have the stock really, is it?

Mr. UHLMANN. The clearing house is the mechanical end of the business; it functions to clear all trades.

Senator MURPHY. I understand; but are you always in debt to it?

Mr. UHLMANN. No; you might have a profit with it. Each night you pay or collect, as the case may be, on trades made for that day. Trades are kept to the market with the clearing house, and in addition to that we have original margin, which is deposited for the account of the clearing house with the bank that falls under the limitations we prescribe.

Senator CAPPER. In what respect does the plan outlined here differ from the practice followed at this time on the board of trade?

Mr. UHLMANN. For the average house it wouldn't differ at all. We simply feel that this would put everyone on an even footing. We figure that as long as every commission house has at all times either cash or in lieu of cash Government bonds, municipals, bills of lading, which are quickly and easily convertible into cash, that the house is liquid and can pay off its customers the same as a bank could, except that we go further, we could pay them off on 5 minutes notice.

Senator MURPHY. You recently had a big failure out there?

Mr. UHLMANN. Yes, sir.

Senator MURPHY. Why did that concern fail?

Mr. UHLMANN. Mr. Chairman, I could give you a much longer story than I want to give you here. My father helped organize that firm in 1901 and was with them for 33 years in its old form, and I would rather not state it for the record. I have my personal opinion. I would say——

Senator MURPHY. My inquiry related to the question of the collateral to secure the trader's customers.

Mr. STURTEVANT. May I be permitted to answer that question?

Senator MURPHY. Whoever can answer it may do so.

Mr. STURTEVANT. Mr. Chairman, I happened to be the chairman of the committee that investigated the affairs of the Rosenbaum Grain Corporation. I can say to you definitely and very briefly that the failure was caused by the fact that they had on file statements which the Chicago Board of Trade auditors found did not correctly reflect the condition of the company, and those statements had been incorrect for a period of years.

Senator MURPHY. I seem to remember that one of your witnesses said your committee on discipline has been functioning diligently the last 2 years.

Mr. STURTEVANT. Yes, sir. [Laughter.]

Senator MURPHY. And your auditors have also been on the job and going into the books of your members?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. Hadn't they gotten around to these folks yet?

Mr. STURTEVANT. Yes, sir; but it has been our custom heretofore to accept a certified public accountant's statement at face value, but we are doing so no longer. Up to that time, we did that, just as banks did.

Senator MURPHY. The certified public accountant's statements were untrue?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. That suggests that we ought to follow the British law and make it a criminal offense for a certified public accountant to certify to an account that is untrue.

Senator NORRIS. I think they do that in England.

Senator MURPHY. Yes; I know they do it in England. Your whole exchange was deceived by the C. P. A.?

Mr. STURTEVANT. Yes.

Senator MURPHY. How are you going to set a fellow to watch the C. P. A.'s?

Mr. SHURTEVANT. Under our proposal, that company would have been in violation of this law, because our proposal briefly is this: Instead of trying to segregate customers' funds as trust funds, we seek to place the commission merchant in the same position as a bank who accepts deposits after it is insolvent. In other words, if a commission merchant under our proposal accepted funds, and they were at the time insolvent, they would be in violation of the law, and the minute they became insolvent they should stop and close their doors.

Senator MURPHY. That C. P. A. is free today to go and ply his trade, is he not?

Mr. STURTEVANT. So far as I know.

Senator MURPHY. Unless you get his permit from the State revoked.

Mr. STURTEVANT. So far as I know.

Senator MURPHY. The State gives him a permit to work?

Senator NORRIS. What I want to ask you hasn't anything to do with this that I know of, but relates to the matter the chairman is bringing out. What happened to the public accountant that made these false statements—anything?

Mr. STURTEVANT. I do not know.

Senator SHIPSTEAD. What happened to the customers?

Mr. STURTEVANT. The matter is still in the bankruptcy court.

Senator SHIPSTEAD. They will lose their money?

Mr. STURTEVANT. Presumably.

Senator NORRIS. There will be some good attorneys' fees.

Mr. UHLMANN. Mr. Chairman, the same statement we accepted was accepted by three of the largest banks in the country, and on it each bank loaned $200,000 in open credit.

Senator NORRIS. Did the banks lose their money in those cases?

Mr. UHLMANN. I am afraid they will.

Senator NORRIS. It has not been determined?

Mr. UHLMANN. The case has been proceeding for the last year under section 77 (b) of the Bankruptcy Act and is still pending.

Senator SHIPSTEAD. What is the name of the company?

Mr. UHLMANN. Rosenbaum Grain Corporation.

Senator NORRIS. I would like to ask the witness some questions about the proposed amendment he has just read. I notice, in subsection (c), securities listed on a national securities exchange.

Mr. UHLMANN. Yes, sir.

Senator NORRIS. Wouldn't that apply to all securities you have enumerated in (a) and (b)?

Mr. UHLMANN. No, sir; it would not. Securities I have listed under (a) are Federal obligations; those under (b) are what are commonly known as municipal bonds; and in (c) we had in mind, to the largest extent, securities traded in on the New York Stock Exchange and other similar exchanges.

Senator NORRIS. Are municipal bonds listed?

Mr. UHLMANN. I don't think so.

Senator NORRIS. I was only asking with the object of trying to clarify this proposed amendment. You have got quite a long statement there in subsection (b). If you boil that down, doesn't it mean that they are municipal securities?

Mr. UHLMANN. Senator, it was the language used in the S. E. C. and language which we thought expressed, as well as we could express it, high-class municipal bonds.

Senator NORRIS. It doesn't follow that they would have to be high class.

Mr. UHLMANN. We assumed that the S. E. C. used the best language——

Senator NORRIS. Just take the language now—maybe it does. I am only seeking information. After all, it seems to me to boil down to just municipal securities. It doesn't follow that they would be high class. They probably would be, as a rule, but they might not be.

Mr. UHLMANN. May I call your attention to one fact, that while everything you say is probably correct—I am not a lawyer—we have above here in the main draft of our statement limited securities, "Approved properties the current loan value of which combined", and so forth. Under that we think we have a pretty fair check.

Senator NORRIS. However, just before you commence to enumerate them, you use this language, "Approved securities and approved properties shall consist of the following", and then you enumerate them.

Mr. UHLMANN. Our language was intended to provide that money should only be extended to the extent of which you could borrow——

Senator NORRIS (interposing). I think that is all right, and you are probably right about that; but when you proceed then to enumerate them, you have in (b) securities of municipal corporations. They are not subdivided or classified. You might have a municipal obligation from a municipality that was not solvent.

Mr. UHLMANN. Then, of course, he wouldn't be able to borrow against it.

Senator NORRIS. Under this you could?

Mr. UHLMANN. No; because——

Senator NORRIS (interposing). They would be listed properly no matter what the conditions might be?

Mr. UHLMANN. We have limited ourselves according to the above paragraph. To make it very definite, we have only stated here what we included as approved securities and then we gave this list of five or six items but just prior to that we stated very definitely such property according to the current loan value. The current loan value of a municipal varies.

Senator NORRIS. Where is that?

Mr. UHLMANN. It would be in line 11 of the original paragraph.

Senator NORRIS. Yes; but that comes above this statement, however, where you say approved securities and approved properties shall consist of the following.

Mr. UHLMANN. That is correct, and then we have listed, to make it entirely specific, what we deem to be those approved securities, and we have said that those approved securities may only be used according to the extent and loan value. If the loan value of a defunct municipal bond is zero, then it is thrown out.

Senator MURPHY. Senator Norris, note in line 4, "(B) or money and/or approved securities with a clearing organization." What occurs subsequently in the second to the last line of that paragraph is apparently intended to be a tie-in with that, "approved securities and approved properties shall consist of the following." If you want to get away from the possibility of cats and dogs going in there as collateral——

Mr. STURTEVANT. We are willing to accept any suggestion on that.

Senator MURPHY. You might say securities acceptable as security with a bank, or something like that.

Mr. STURTEVANT. We accepted the S. E. C. definition, thinking it would be acceptable, without much consideration.

Mr. UHLMANN. The language of subhead (a) and (b) with respect to Federal issues and municipal bonds.

Senator NORRIS. I am not objecting to the language he is using there is subsections (a) and (b). My only suggestion in regard to those was that it seemed to me a little cumbersome there when you might say it in one sentence.

Senator MURPHY. It seems to be cumbersome and yet he says he follows in the language of (a) and (b) that of the Secuirties Act.

Mr. STURTEVANT. Yes, sir.

Mr. UHLMANN. I might say, when I drafted it originally for my own purpose I had it in the language which you and I discussed; but I felt I had to go further, and after consulting counsel we put it in such form that we hoped might be acceptable and still meet all requirements.

Senator NORRIS. I think it is acceptable and I am not abjecting to it, but you have gone clear around the house to tell something that you might have told in one or two words, it seems to me. [Laughter.]

Senator MURPHY. All the moneys you get go into a common pot, and as a margin customer, I get a credit on my account in the ledger, that is the way you proceed?

Mr. UHLMANN. You are speaking of your money coming into the commission house?

Senator MURPHY. Yes; assume I have an open trade with you.

Mr. UHLMANN. That is correct.

Senator MURPHY. My money goes in as a margin requirement, and goes into a common pot?

Mr. UHLMANN. Yes, sir.

Senator MURPHY. If there is anything left, I get it if I guessed right. [Laughter.]

Mr. UHLMANN. Mr. Chairman, I will just state that I have to lose all my money before you lose a cent of yours.

Senator MURPHY. Yes; you have some stock in the clearing house company.

Mr. UHLMANN. I have stock in the Uhlmann Grain Co.

Senator MURPHY. Your stock in the Uhlmann Grain Co. is issued to get stock of the clearing house?

Mr. UHLMANN. No, sir; it has nothing to do with it.

Senator MURPHY. That is separate and distinct?

Mr. UHLMANN. It is just as separate as Sears, Roebuck.

Senator MURPHY. Do you put up your stock in the Uhlman Grain Co. with the clearing house as collateral?

Mr. UHLMANN. No, sir; my stock is in my own securities box for my own use.

Senator MURPHY. That is a corporation?

Mr. UHLMANN. That is correct.

Senator MURPHY. You wouldn't declare a dividend on it overnight and leave us holding the bag the next day?

Mr. UHLMANN. In Illinois, we can only declare those out of surplus. [Laughter.]

Senator HATCH. Mr. Uhlmann, as I understood your statement, you stated that you objected to the language of this bill because it was not practicable and did not attain the end sought.

Mr. UHLMANN. That is correct.

Senator HATCH. From the standpoint of the commission merchant is it practicable and workable?

Mr. UHLMANN. The way it is written now?

Senator HATCH. Yes.

Mr. UHLMANN. I wouldn't want to state, but I think not. We have been here 6 or 7 days and we have been wrangling between accountants and attorneys, and I don't think any two have come to the same conclusion as to what the bill really meant. I am not saying that in a way to find fault with whoever wrote it, but I honestly don't understand it and I have tried to study it.

Senator NORRIS. That is the trouble with our laws. There doesn't anybody understand them until the court gets through with them, and then the only understanding we have is that the court doesn't understand them. [Laughter.]

Mr. UHLMANN. I wouldn't undertake to answer that. [Laughter.]

Senator MURPHY. You stop at the threshhold of the courts. [Laughter.]

Have you covered all you are going to say, Mr. Uhlmann?

Mr. UHLMANN. I think so. I will say in a closing way that what we seek is what you people seek. We want safety; and I know that as president of the Clearing Corporation it gives me a great deal less to worry about to know that everyone of our members is in good standing, and I think we are agreed on the idea that it is for the best interest of the trade for us to feel that every house must always have in its treasury sufficient cash, or something in lieu thereof, to pay everyone off when money is wanted.

Mr. STURTEVANT. May I have 30 seconds, Mr. Chairman? I made a very broad statement in connection with the auditors in connection with the Rosenbaum Grain Corporation. I want it noted that that is my opinion and that it is not a statement of fact. Inasmuch as the case has been mentioned, I would like to have it in the record that the company itself and the head of the organization were expelled from our organization as a result of the proceedings.

I next call your attention to pages 8 and 9 of the act. These are provisions of the act which seek to prevent cheating and defrauding, deceiving, and bucketing, and so forth. We have one technical objection to paragraph (D) on page 8 and the same objection to paragraph (A), commencing on line 10 on page 9.

Referring to cross trades, the situation is this: It sometimes happens that a commission house, such as my own, having several traders in the pit and many orders coming in fast, which are telephoned over

to the pit by five or six boys, that an order to buy and an order to sell will reach two brokers, each of whom is acting for us, and they unknowingly and unwillingly will buy from the other representative of the same house, and at the end of the day we find ourselves on both sides of that trade. We offer as an amendment, to be added at the end of paragraph (D), line 26, page 8, and at the end of paragraph (A), line 13, on page 9, the following:

Provided, That on transactions where brokers, as agents for their members, meet in the execution of orders in the open market, and without prearrangement unintentionally consummate a contract for one and the same clearing member principal, such transactions shall not be in violation of this act.

Senator NORRIS. You offer that amendment in two places?

Mr. STURTEVANT. Yes; because the definition of cross trades and the person becoming the buyer and seller are synonymous to our minds so we think we are in trouble on both sections. These brokers are not in our employ in the sense that they are on our pay roll. They are independent brokers who have no interest in the trade other than collecting their commissions and all our orders go to men of that class who are independent and live by their commissions only and take such orders as we and other commission houses give them.

Senator MURPHY. It is the men in the pit?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. You get these orders from your clients and send them right out to them and you don't know what you have before the day is over?

Mr. STURTEVANT. That is the idea, and we may find ourselves at the end of the day as being on both sides of the same trade. We execute these orders very rapidly. They go through in a fraction of a minute. A man gets an order to buy and the other man gets an order to sell and neither has any idea who the real principal is, even though it comes from the same commission house.

Senator NORRIS. This suggested amendment is to relieve that situation?

Mr. STURTEVANT. Only that, sir.

Senator MURPHY. One of your brokers might buy the very selling order that you sent down?

Mr. STURTEVANT. Yes, sir; not only that, but they very often do.

Senator MURPHY. Of course, this says, "or willfully, knowingly, and without the prior consent of such person."

Mr. STURTEVANT. Willfully and knowingly is omitted from the other paragraph.

Senator MURPHY. All right, what else have you?

Mr. STURTEVANT. Are there any further questions on that point?

Senator MURPHY. No.

Mr. STURTEVANT. We would be inadvertently breaking the law without knowing it in the case of this matter we were just discussing.

Our next objection runs to page 17, paragraph 4, beginning on line 23, and continuing all of page 18 and lines 1 and 2 on page 19. I will call Mr. F. Peavey Heffelfinger.

STATEMENT OF F. PEAVEY HEFFELFINGER, VICE PRESIDENT AND GENERAL MANAGER, MONARCH ELEVATOR CO., MINNEAPOLIS, MINN.

Mr. HEFFELFINGER. Mr. Chairman and Senators, my name is F. Peavey Heffelfinger, of Minneapolis, Minn., and I hold a position as vice president and general manager of the Monarch Elevator Co., a subsidiary of F. H. Peavey & Co. of Minneapolis.

The Monarch Elevator Co. was first incorporated in 1893 and we have therefore served our territory and our farmer customers for over 40 years. At the present time we are operating 124 country elevators located in the States of Minnesota, North Dakota, and South Dakota. This company handles about seven to ten million bushels of grain each year, depending upon the crop.

The nature of our business is direct dealing with the farmer. We buy, clean, or store his grain in our country elevators, according to his wishes. We also handle what we term farm needs, mainly coal, twine, flour, feed, salts, seed, and so forth, and are prepared to give extensive credits on all of these items when necessary.

This in the main is the general business of country elevator operation, whether it be cooperative or privately owned, and I mention it so that you may clearly understand that we are dealing directly with the farmer and are extremely anxious to maintain a broad futures market so that we, as country elevator operators, can insure ourselves through hedges and thereby handle the farmer's grain at the lowest possible cost.

I am discussing here a provision in this commodity exchange bill which in a general way deals with the cessation of trading during the last part of a current delivery month for a period of 3 days to 10 days.

In reference to the provisions under section 5 (a) paragraph 4 of House Resolution 6772 providing for the elimination of active trading in futures in any current month for a period of from 3 days to 10 days by order of the Secretary of Agriculture, I see serious objections to such provisions from a practical point of view as a country elevator operator dealing directly with the farmer and in the interests of the farmer. Those difficulties are from a hedging point of view and the minute you present problems in hedging, you get back to a wider margin and must exact that wide a margin from the farmer. As we approach the last 10 days of any current future month, it would be dangerous to hedge in that month on grain which we are buying in country elevators so that farmers would lose at times when the nearby or current month, as we call it, was higher than the deferred future months. That is the case right now, for instance, in Minneapolis, where we have our nearby future month, on which the cash grain is based, higher than the deferred futures of July and September. This is under the provisions as outlined under this section 5 (a) paragraph 4 which would allow no trading in the last 3 to 10 days in any current month by order of the Secretary.

In the first place, we would have the risk of grades.

Senator MURPHY. Pardon me, this prohibition of trading is only when there is an attempt to run a corner in the market, isn't it?

Mr. HEFFELFINGER. Well, it might be construed to be the present situation. What is a corner on the market?

Senator MURPHY. Oh, I guess we all have pretty general ideas about what a corner on the market is, haven't we?

Mr. HEFFELFINGER. I know, but I am discussing this from the angle of the country elevator operator, and if we can buy the grain from the farmer and give him a better price and merchandise that grain, I see no objection to it. In other words, if I can hedge and buy the grain from the farmer and reflect that higher basis for the May wheat, for instance, at the present moment than to have to go over on the July, the farmer gets the benefit of it.

Senator MURPHY. Have you known a farmer to benefit from a corner?

Mr. HEFFELFINGER. Certainly. What year was it we had that situation where the market went up in the spring, 1934, wasn't it? As I say, we have been in business for 40 years and we handled more grain at our country elevators in the month of May than we did in any other month of the year. I think most any country elevator operator would admit that that was a very, very unusual situation.

Senator MURPHY. Was there an attempt to run a corner on the commodity at that time?

Mr. HEFFELFINGER. I presume it might be called that. In other words, the farmer marketed his grain because the prices went up.

Senator NORRIS. That is probably natural, but I am not interested in having a corner on the market for the benefit of the farmer. It doesn't make any difference to me who benefits. It is a bad thing and it ought to be excluded.

Mr. HEFFELFINGER. I am not defending a corner or squeeze.

Senator MURPHY. I was going to follow that out by asking you if you had ever known the farmer to suffer by reason of a corner?

Mr. HEFFELFINGER. Have I known the farmer to suffer by reason of a corner?

Senator MURPHY. Or an attempt to make a corner?

Mr. HEFFELFINGER. I can't say that I have in my experience.

Senator MURPHY. You asked me what a corner is. Do you know what a corner is? You are arguing against this provision here in relation to a corner. Obviously, you have some knowledge about what a corner is. What is it?

Mr. HEFFELFINGER. Mr. Chairman, what I am arguing against is the provision which would prevent us from exchanging futures, trying to show that we will therefore have to go over to the deferred future month in buying our grain from the farmer earlier in the month.

Senator MURPHY. That is only in the extreme circumstance of there being an attempt to run a corner.

Senator NORRIS. Mr. Chairman, the American people for many years have been hunting a corner that they could get around [laughter] and find the other side of it.

Senator MURPHY. You asked me what a corner was, and yet what you are saying here concerns an attempt to run a corner.

Mr. HEFFELFINGER. I don't think these provisions would prevent that.

Senator MURPHY. Prevent running a corner?

Mr. HEFFELFINGER. No.

Senator MURPHY. Well, these provisions were defined to relieve the squeeze.

Mr. HEFFELFINGER. If I may be permitted to finish my testimony, I think I can show that it won't.

Senator MURPHY. We will give you time to finish your testimony. Go ahead.

Mr. HEFFELFINGER. According to my judgment and what I am attempting to show is this: It won't be possible without the trading in futures to bring grain into the market or to continue to buy it from the farmer and market it during that period when we have no trading in futures. We often lose grades between the grain as bought by our managers out in the country and the grain at the time it comes into the terminal market. We might buy a carload of wheat on May 15 and sell a May hedge, figuring the car was a contract grade, No. 2 Dark Northern, for instance. Under this proposed provision in the commodity exchange bill which I am talking about, if that car came into the market on May 25 and graded No. 3 Dark, we would be in default on our contract.

Senator NORRIS. I don't understand that.

Mr. HEFFELFINGER. We have no way of buying our future back. The only thing we can deliver on the future from a country elevator's point of view—may I go ahead and show the comparison with the present system? The way the thing works now, we can buy the future back. Therefore, the new provision will tend to make us cautious and fearful as we approach the last 10 days of the month. It will react directly against the farmer because we will have to base our cash prices to the farmer on the next succeeding active month, which would be at a discount.

In other words, at the present time we can continue to buy grain based on the future which is at a premium, and we can market that grain; and if we are not delivering it, if it is not of contract grade or is a misgrade, we can buy our future back; but if the provision here is made law, and trading is prevented and we have bought that grain and shipped it into the market and it is not a deliverable grade, we can't deliver it on the contract and we would be in default.

Do you follow me, Mr. Chairman?

Senator MURPHY. Haven't we all known a good deal in advance from the newspapers when an attempt was being made to run a corner?

Mr. HEFFELFINGER. Yes.

Senator MURPHY. We have all known that pretty well. Wouldn't you have that same information and advice? You see, this refers to extreme circumstances. This is not an interference with the usual progress of your business. This is the extreme circumstance of a corner. We haven't had an attempt to run a corner in a long, long time.

Mr. STURTEVANT. Mr. Chairman, may I very briefly make a statement which is as much a surprise to me as to you? We had interpreted the bill just as you are interpreting it, but I understand that while the word "squeeze" is in the bill, the Grain Futures Administration has no intention of applying this section to any immediate

situation, because if they did, it would affect contractual rights. So, my understanding is that their intention under this section is that if they find the general practice tends to do this, they will hold hearings and put a ruling into effect that will be far enough in advance so as not to affect these existing contracts. In other words, it is not intended as an emergency measure but as a permanent measure.

Mr. HEFFELFINGER. If it was intended not as an emergency measure, we would have no objection to it.

Senator MURPHY. You mean if it were intended only as an emergency measure, don't you?

Mr. HEFFELFINGER. No.

Mr. STURTEVANT. Your objection to it is that it is intended as a permanent regulation?

Mr. HEFFELFINGER. Yes, sir.

Senator MURPHY. Well, it didn't impress me as something designed to be a permanent regulation.

Mr. STURTEVANT. It didn't impress us in that way either, Mr. Chairman, but that is my understanding.

Mr. HEFFELFINGER. Isn't it correct that the Grain Futures Administration asked the Board of Trade and they did put in a provision eliminating trading the last three days of the month and now have those rules in effect?

Senaor MURPHY. I don't make any affirmation one way or the other; I don't know; but I say that my inference from my cursory reading of this was that it was designed to be an emergency measure to prevent corners and to checkmate them.

Mr. HEFFELFINGER. I haven't any objection on that score.

Senator MURPHY. And if there was a tremendous squeeze, they could extend the period for delivery so as to relieve the squeeze.

Mr. HEFFELFINGER. My second point is as to the assembling of carlots. You will understand we are buying wagonload and truckload amounts of grains, and it is often hard to accumulate carlots for shipment of the proper number of bushels of any one grade. Therefore, if we had no trading in futures the last 10 days of a month, we would have to be more careful about buying from the farmer and giving him the benefit of the nearby premium month because we might not be able to accumulate enough to ship of any one grade and then we would be in default on our sale of a future. The way it is now, we stay on the nearby premium month just as long as we dare, but if we haven't the right grade or if we can't ship the grain, we can always get out of the market by buying in our future and we can judge from time to time what our risk might be.

Let me give you a specific example: I remember a year or so back one of our big customers at Gilby, N. Dak., hauled in a carload of wheat and put it in a special bin in our elevator there. It was about the 10th of May, and the buying prices at country stations were already based on July, which was at a discount. Country elevator operators could not be sure of getting their grain in to apply on the May hedge and had to hedge in July, but in such a special case like this Gilby one, and they are a common occurrence, where we had a full carload of one grade of wheat and had seen a sample and knew we could get a railroad car right away to load it, we paid this farmer quite a premium over the actual buying price at the station.

Now, if there was no trading the last 10 days of the month and such a case came up, we certainly could not take the risk where we could not buy our future back in case the car misgraded. We would have to base our price to the farmer on the deferred future which was at a discount.

Do I make myself clear on that?

Senator MURPHY. Yes; the suspension would be as to the current price really. The suspension would affect the current price.

Mr. HEFFELFINGER. It will just advance the period when the cash buyers of the farmers' grain must go on to the deferred future month; that is, this is all predicated on a period which we now have. For instance, in the Northwest your deferred futures are at a discount.

Senator MURPHY. You don't sell any futures until you have graded and inspected your grain?

Mr. HEFFELFINGER. We sell the future when we buy the grain from the farmer at the country elevator.

Senator MURPHY. Then, finding your error, you buy it back?

Mr. HEFFELFINGER. Yes, sir.

Senator NORRIS. Do you offer anything in place of this? Is there any substitute offered for it?

Mr. HEFFELFINGER. Mr. Sturtevant, do you wish to offer that substitute now?

Mr. STURTEVANT. No, sir.

Mr. HEFFELFINGER. As far as I know, there is no demand for the cessation of trading the last 10 days of any current month or any part thereof from the country elevator operators or any other portions of the grain trade in the Northwest.

Senator MURPHY. You don't conceive of any good this would serve?

Mr. HEFFELFINGER. No; I don't think it would serve as a benefit of any kind. Ten days is too long a period. Certainly it would not if we had it as a permanent regulation under which we might be forced to operate from time to time; 3- to 5-day cessation might be all right.

Senator MURPHY. That is all.

Mr. STURTEVANT. I want to offer an amendment on this section. In addition to Mr. Heffelfinger's general objections to the bill, we have two minor technical objections. As the bill reads now, we feel that it would permit the Secretary to issue orders affecting existing contracts and that the bill should be clarified by the addition of the following amendment:

Line 13, page 18 add the following words:

Provided, however, that such order shall not apply with respect to current delivery months or delivery months in which trading has already begun.

We also desire to offer the same amendment to paragraph 5, beginning on page 18 and to add at the end of line 2 on page 19 the same identical words.

Senator MURPHY. I don't know whether Senator Norris' supermind has gathered all this or not. I am frankly not clear in my own mind about any of it. What is this bill as written designed to do?

Mr. STURTEVANT. In my opinion, it is designed to give the Secretary authority to determine by a hearing whether or not as a general practice trading should stop before the end of the delivery month. That refers to section 4 and section 5——

Senator MURPHY (interposing). What circumstances are going to suggest to his mind the necessity of a hearing, in the contemplation of those who drafted the bill?

Mr. STURTEVANT. The bill mentions squeezes, corners, and market congestion. In order to meet with the ideas of the Department on this particular section of the bill, the Chicago Board of Trade has already had in effect for several months a rule requiring cessation of trading 3 days before the end of the contract month. All contracts on the Chicago Board of Trade are subject to cessation of trading in those contracts 3 days before the end of the month.

Senator MURPHY. In those particular contracts; but you can continue your business as to future and you merely stop 3 days before the end of the month on contracts for delivery in that month?

Mr. STURTEVANT. Yes. We have met that situation in that way.

Senator MURPHY. What is the virtue of that?

Mr. STURTEVANT. I think to the mind of the Department it would work like this, that if there was a squeeze or a corner, if you please and the price went up to a high level, when trading stopped, then the country shipper of grain and outside shipper of grain or any owner of grain would have that opportunity to bring his grain in and deliver it at that high price, provided he made the sale at the closing price, and with that knowledge that that stuff might move in, it would tend to prevent the corner.

Senator MURPHY. You voluntarily put that practice into effect?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. Before you put that practice into effect, the country shipper, unless he had the grain in on that last day of May at an undetermined price, would be shut off from that price?

Mr. STURTEVANT. If he did not have it there in time.

Senator MURPHY. I say unless he did. This gives him 3 days in which to make delivery on the option in which trading closed 3 days before?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. It was designed to serve the interest of the fellow out in the country?

Mr. STURTEVANT. Yes, and to have the moral effect on the man who might want to operate to the end of the delivery month, which is a dangerous period.

Senator MURPHY. You mean to restrain him from operating?

Mr. STURTEVANT. Restrain him from doing the things which we don't want him to do and which you don't want him to do.

Senator MURPHY. How does that affect a corner?

Mr. STURTEVANT. We don't know. We don't think it means a thing.

Senator MURPHY. Suppose it was a corner, wouldn't it give 3 more days for delivery?

Mr. STURTEVANT. Yes.

Senator MURPHY. And to that extent would relieve him?

Mr. STURTEVANT. Relieve the seller. The seller is the man that makes delivery. It gives him 3 more days to make delivery.

Senator MURPHY. Well, I understand that now. The Department seeks to do that as you see it in this provision?

Mr. STURTEVANT. You are referring now——

Senator MURPHY (interposing). You have stated what your voluntary practice is now, the rule you put into effect, presumably after consultation with the Grain Futures Administration?

Mr. STURTEVANT. It is exactly the same thing except that we think this gives him the power to issue an order affecting contractual rights or existing contracts, and we don't think the law should make any such provision. There is confusion as to whether or not this is an emergency measure. If it is an emergency measure, it will affect contractual rights if invoked.

Senator MURPHY. Of course it is not an emergency measure to the extent of imposing by law what now is voluntarily done. That is a regular practice now, to quit trading 3 days in advance of the end of the month?

Mr. STURTEVANT. Yes, sir.

Senator MURPHY. It does more than that, however, in your judgment; you think it does more?

Mr. STURTEVANT. Yes, it might.

Senator MURPHY. What are you going to suggest?

Mr. STURTEVANT. We suggest to add on page 18, line 13, "provided, however, that such order shall not apply with respect to current delivery months or delivery months in which trading is already begun", and on line 2, page 19.

Senator MURPHY. That would defer the effectiveness of these provisions for how many months?

Mr. STURTEVANT. Ordinarily, 6 or 8 months.

Senator MURPHY. When do you begin trading in September futures, for instance?

Mr. STURTEVANT. About 6 months ahead of the delivery month. There is no fixed rule on it. It is just whatever the commercial demand requires and necessitates. The first operative time this could affect now would be a year from now, if an order was put in today. That would be May 1937.

Senator MURPHY. You would stay his hand for a year?

Mr. STURTEVANT. Which we understand is what he intends to do.

Senator MURPHY. Well, the squeeze could have progressed pretty far before he could act, couldn't it?

Mr. STURTEVANT. I would think so. To our mind, this one and the next one I am going to refer to are very unimportant.

Senator MURPHY. Go ahead.

Mr. STURTEVANT. The next section, line 2, page 19, we would add the same words. This section refers to a requirement that the Secretary may, after hearing and notice, require members of the exchanges to give notice of their intention to make delivery on futures contract. We have the same objections to that as we have to the other section and offer this same amendment in addition to that——

Senator NORRIS (interposing). Where do you put that?

Mr. STURTEVANT. At the end of line 2 on page 19.

Senator NORRIS. You have already put one amendment there.

Mr. STURTEVANT. It is the same one, Senator; I read it twice. The board of trade has already put into effect a rule which requires 1-day notice of the intention to deliver, and the bill reads "3 days." We

would like to have the bill changed so that we can operate as we are at the present time, which we believe is entirely satisfactory to everyone.

Senator MURPHY. Three days' notice?

Mr. STURTEVANT. One-day notice.

Senator MURPHY. How is that going to help the fellow out in the country?

Mr. STURTEVANT. I don't think it helps him or hurts him.

Senator MURPHY. If you give him 3 days he can bring his grain in from a greater distance, can't he? It takes him a day to load, doesn't it?

Mr. STURTEVANT. This is purely a clearing-house matter; I don't think it affects the country at all. As I understand it, I think the intent was to give the buyer of grain an opportunity to arrange his finances to pay for grain that was to be delivered to him. Until we put the 1-day notice in a delivery that was made had to be paid for almost immediately, almost the same day. The Department suggested that it would be only fair that the buyer of grain should be protected in this rule by a notice of delivery, and in accordance with that suggestion we have put in the 1-day rule, and we think that is sufficient. We think it is working all right and is satisfactory to everybody.

Senator MURPHY. That wouldn't affect that prior 3 days, would it?

Mr. STURTEVANT. No, sir; that is another one.

I would like to submit, if I may this afternoon, a suggested amendment to that.

Senator MURPHY. Go ahead with it now.

Mr. STURTEVANT. I haven't got it ready.

Senator MURPHY. Are you ready to recess now?

Mr. STURTEVANT. Yes, sir.

Senator NORRIS. Are these gentlemen through?

Mr. STURTEVANT. We have one more short witness, Senator, and then we will rest.

Senator MURPHY. We will run this afternoon, resuming at 2 o'clock. The butter-and-egg folks are here in opposition to the inclusion of butter and eggs. We will hear them when the grain-trade opponents get through. The butter-and-egg people have asked for half an hour. Then we will enter immediately upon hearing the witnesses who are the proponents of the bill.

Mr. IRVING B. GOLDSMITH. My name is Irving Goldsmith, and I am counsel for the Farmers National Grain Corporation. The proponents of the bill have asked me to say that they would prefer the opportunity of examining these various amendments that have been proposed and of which we do not even yet have copies, which have been suggested by the Chicago Board of Trade, prior to the time we put on our case. We intend to put it on in an orderly fashion. Were it not for the suggestions as to changes in the bill we would not find it necessary to say anything, because the House hearings of 2 years ago fully covered the case for the bill as it now stands. We therefore suggest, Mr. Chairman, that we could save the time of the committee and put on our case in more orderly fashion if we were permitted to commence tomorrow morning, so as to have the evening to go over these amendments, which we hadn't heard of before this session.

Senator MURPHY. You have the amendments offered here yesterday, haven't you?

Mr. GOLDSMITH. Yes, sir. Let me correct that by saying that I don't recall any particular amendments offered yesterday.

Senator NORRIS. Why wouldn't this be a good plan, Mr. Chairman? Let's meet this afternoon and hear the one witness and then hear the butter and egg men and then adjourn until tomorrow morning at 10 o'clock?

Senator MURPHY. We have limited this hearing to 3 days, you know, and we are not going to run over 3 years. I personally am kept away from other committee hearings which I am most anxious to attend.

Mr. GOLDSMITH. We don't want to unduly burden the committee but our understanding when we came to Washington—although it may be erroneous, was that each side would be limited to one day. We should have been able to answer what the opponents of the bill said in one day if they had taken only a day but we have witnesses representing various farm groups in the country, all of whom want to be heard and all of whom will direct their discussion to different phases raised by the Chicago Board of Trade. It may be that an adequate presentation will take a day and half or at the most 2 days.

Senator MURPHY. We have got to cut these hearings short and I don't know why or what the committee decided—I was not present at the executive session—I don't know the reasons for it.

Senator NORRIS. I wasn't here either, but I had a definite understanding, it may be wrong, but it was that we were going to have hearings for 2 days, 1 day for each side. That was my understanding but now we have taken up much more time than that, although I am not complaining about it.

Senator MURPHY. Can't you put on a number of witnesses this afternoon notwithstanding these difficulties?

Mr. GOLDSMITH. We had in mind putting on Mr. O'Neal and Mr. Taber of the Grange, who is not here at this time and who did not anticipate testifying today. It was understood yesterday that the proponents of the bill would not go on until tomorrow. That was the ruling of the Chair.

Senator MURPHY. The Secretary of the committee advises that the committee has other hearings scheduled for Friday. It is a matter of a squeeze. Put on 2 or 3 hours this afternoon if you are ready to go ahead.

Mr. GOLDSMITH. Then we will attempt to go on this afternoon, and if we are not able to finish by tomorrow, and I imagine we won't have a great amount of time this afternoon, I assume there will be some consideration of giving us additional time.

Senator MURPHY. I can't give assurances as to that because, as I say, we are caught in a jam because we have another committee hearing already scheduled for Friday morning. You are familiar with the demands on us.

The committee will now be in recess until 2 o'clock.

(Whereupon, at 1 p. m., the committee recessed until 2 p. m. this day.)

AFTER RECESS

The committee reassembled at 2 p. m., pursuant to recess.

Senator MURPHY (presiding). The committee will come to order.

Senator BULOW. Mr. Chairman, last week when these hearings were originally scheduled there was a man from South Dakota here, and, in my opinion, he knows as much about the grain business as anybody. I would like your consent to have his statement appear in the record.

Senator MURPHY. His statement will appear in the record, without objection.

(The statement referred to follows:)

THE FARMERS' ELEVATOR ASSOCIATION OF SOUTH DAKOTA,
OFFICE OF THE SECRETARY,
Aberdeen, S. Dak.

To the Honorable Senate Committee on Agriculture and Forestry:

I wish to submit the following testimony in opposition to House Resolution No. 6772, known as the Jones commodity exchange bill. I regret exceedingly that because of the pressure of work on the farm at this critical season, and because of the postponements of the hearings, I could not avail myself of the privilege of appearing before the committee to express my views in person. So I respectfully submit the following written testimony for your consideration.

My name is Cris Jensen. I am 68 years old. I have been farming for 40 years in Brown County, S. Dak., which is still my only gainful occupation.

I help to organize and have been been a director on our local farmers elevator for 25 years. For the last 6 years I have been president of the South Dakota Farmers' Elevator Association. In these connections I have been a close student of our marketing system for many years.

I have become a firm believer in a free and open market and in the system of trading in contracts for future delivery of grain. I have studied the several congressional and other nonpolitical reports of the marketing system, which have been unanimous in their findings—that trading in futures affords the best, and in fact the only means for stabilizing the price of grains throughout the crop year. It prevents collusion and unfair price fixing and monopoly, because of the widespread participation of the public, which according to an analysis of 1 day's trading on the boards of trade, made by Dr. Duval, included even clam diggers and Chinese.

I recently listened to a prominent farm leader in a radio address wherein he lamented that farmers were practically compelled to sell their products at public auction to the highest bidder. If that is true, I think we should be very careful not to pass laws that would limit the attendance at such auctions. We should do everything possible to encourage traders and capital to attend these sales in order that the highest possible price may be secured.

The Jones commodity exchange bill now before the Senate Committee on Agriculture and Forstry for public hearings is negative and misleading in its provision. In the title it is stated "to limit and/or prohibit short selling." Certainly the meaning must be to limit and/or prohibit trading in contracts for future delivery, since it takes two to make a trade and the "longs" always equal the "shorts." Much harm has come to our market because of such misrepresentation by giving only one side of the picture.

Evidently in this bill speculation is regarded as an evil and therefore should be limited or prohibited. But somebody must speculate in the distribution of commodities produced in about 3 months, that must be distributed in a period of 12 months or more. Shall it be the farmers, warehousemen, processors, and so forth, who do not want to speculate? If so, cetainly much larger handling charges must be made all along the line, which would have to be paid by the farmers. Or will the Senate permit this necessary and unavoidable speculation to be carried on by volunteer speculators who use their own money without cost to the public, since of course it needs no demonstration to prove that the speculative traders can take out of the market not one penny more than they put in, because what one speculator makes the other one loses; they must live entirely upon themselves.

Consider the risk and cost of marketing potatoes, in which there is no future market. Last fall a neighboring farmer sold his effects at public auction. The price of potatoes at Chicago was much higher than was that of oats and barley. He had no trouble selling his oats and barley, but he could not obtain a single bid on his potatoes—not even to take them out of his cellar free gratis.

In my early years of farming, there was not any trading in futures in barley and rye, and the handling charges for these grains were much higher than they were on wheat. In fact the local elevators were often reluctant about buying them at all! After several petitions to the chamber of commerce at Minneapolis to establish future trading in these grains, the chamber finally consented to do so, which at once cured this disparity in handling charges relative to wheat.

The bill is indefinite about how much limitation and restriction of trading in futures will be applied to the marekt, since it is to be left to the judgment of a departmental officer, which makes for uncertainty. But to the same degree that the market is restricted, we shall have lost the principle stabilizing factor in our market. We shall have lost the ability to handle the cash article with safety at small margins all the way from the producer to the consumer. We shall have impaired our ability to find readily, enough money to buy all the grain offered during seasonal heavy movements, for the banker lends freely to buyers largely because he knows that he can and will be insured against loss by a hedge in the speculative market.

We should have, instead, a narrow, local market, easily glutted or influenced by seasonal heavy local receipts, and more apt to be taken advantage of by the comparatively few local buyers, to the detriment of the producers, many of whom must sell immediately, regardless of what the conditions of such a market might be.

A free, wide-open marekt, untrammeled by unreasonable restrictions, world-wide as it practically is, is the best assurance against individual manipulation, for even crowds cannot prevail except for a very short time, and usually at great cost to themselves.

The function of the short seller as a stabilizing force in the market is much misunderstood by many people. When hysteria grips the market, induced by a prospective major crop failure in the making, the extent of which no one can determine until it has run its course, vast new crowds appear in the market who are not ordinarily speculators in any constructive meaning of the word. Such crowds are possessed by one fixed idea—the impending crop failure. They feel, rather than think, that there is only one thing to do. Buy, buy!

In such a market there are but few men exempt from being influenced by the popular psychology. It takes vastly greater courage to sell than to buy under such circumstances. A man must be pretty sure of having analyzed the whole situation correctly before he decides to risk his money and sell to meet the furious demand to buy. If there were no short sellers, how could it be met?

I can't even imagine what might have happened during the bull market we had in the summer of 1933 had there been no short seller at that time. He steadied and restrained the orgy all the way up. Figuratively speaking, he sat on the top of the bubble and kept it from bursting all over the landscape. After the buying hysteria had spent itself, who then caused the market to fall? Not a short seller. No, indeed. Why, it was these same enthusiasts that had forced it up. On the upward swing they were animated by ecstasy.

When they decided they wanted to sell and could find no buyers they became possessed by panic. The decline in prices resulting from the panic would have been even more precipitate had it not been for the much-maligned shorts. They were the only buyers to be found, and by their buying, supported, or restrained the fall of the market. Thus the real speculator acted as a balance wheel or stabilizer both ways.

The section of the bill that would permit certain corporations that differ from others in nothing but name to pay direct rebates on bushel basis, I believe would be wholly bad. We all remember the good old days of rebates, where the big fellow got the rebates, and the little fellow got the dirty end of the stick. It might so disrupt and degenerate our marketing system, by narrowing it down to a few large operators which would make it a very poor auction, indeed.

It might make an approach to the same condition in the terminal market, that prevailed in the primary market where collusion, not competition among

the buyers, was the order of the day. Which condition was so thoroughly cured by the advent of the farmers' elevators.

As I cannot appear before you in person I will refrain from commenting on the remainder of the bill, it being more technical and less effected by principle.

Very respectfully submitted by

CRIS JENSEN,

President of the South Dakota Farmers' Elevator Association, and delegated to represent the Farmers' Elevator Association of Minnesota, the credential of which I submit.

Dated: Putney, S. D., April 18, 1936.

THE FARMERS' ELEVATOR ASSOCIATION OF MINNESOTA,
OFFICE OF SECRETARY,
Minneapolis, Minn., April 13, 1936.

To whom it may concern:

This association with a membership of about 240 farmers' elevators authorizes Mr. Chris Jensen, president of the Farmers' Elevator Association of South Dakota, to represent it in the hearing before the Committee on Agriculture of the United States Senate regarding the so-called commodity exchange bill.

Very truly yours,

OSCAR A. OLSON, *President.*

Senator MURPHY. Now, Mr. Sturtevant.

Mr. STURTEVANT. Mr. Chairman, this morning you asked me to present our amendment to paragraph 5, on page 18 of the bill, which is that section of the bill relating to notice of delivery on futures contracts.

Senator MURPHY. Yes.

Mr. STURTEVANT. And the amendment which we propose is the simplest possible. We will request that you change, on line 18, the word "three" to "one", preceding "business days", in order that we may have the privilege of continuing to operate as we do at the present time. The Secretary may make it longer, but we may still continue to do business on the 1-day notice.

I have been requested by Mr. Ellis to correct for the record his statement to the effect that the conflict between the federal and state laws relating to warehouses did not apply except to Chicago. We are now advised that the same conflict applies at Kansas City, under both the Missouri and the Kansas laws.

Mr. Ellis was to submit an amendment, a revised amendment, with reference to the trial and appeal of cooperatives to the Secretary, and he will file that with the Secretary.

Senator HATCH. Mr. Chairman, if you will pardon me.

You don't happen to know whether the laws in Kansas and Missouri to which you referred are constitutional in those States or merely statutory?

Mr. STURTEVANT. Senator Hatch, I do not. If it is vital, I can get it.

Senator HATCH. No; it is not vital.

Mr. STURTEVANT. Mr. Goldsmith this morning referred to these amendments as the amendments of the Chicago Board of Trade. For the record, I desire to correct that statement. These are the amendments proposed by the grain trade as a whole, represented here by the grain committee on national affairs, of which I am the chairman. Each one of them has been agreed to by representatives of the other exchanges before presentation.

We have one more section to bring to your attention, Mr. Chairman, and we will be very brief. It is paragraph (B), page 9, beginning with line 14 and ending with line 17. It is the prohibition under section 4 (c) which would prevent trading in privileges or indemnities, and I am going to call Mr. Coughlin for a very brief statement on that section.

Senator MURPHY. Very well.

STATEMENT OF JAMES J. COUGHLIN—Resumed

Mr. COUGHLIN. Mr. Chairman and Senators, as to the history of privileges and indemnities, as you know, they have had a rather tumultuous career; but they are useful, both economically and otherwise, in the transaction of the business in the futures exchanges.

I am not going to launch into a complex or technical discussion of what privileges or indemnities are, because if all of the members of the committee do not know all about that subject, I am sure a sufficient number of them are sufficiently informed so as to advise the other Senators on the committee as to their exact nature.

There is one thing I want to stress with relation to indemnities that it seems to me is commonly overlooked, and that is that by their proper and timely use they do tend to a very substantial graduation or diminution of speculative risk; and that is the primary purpose for which they are used.

Heretofore indemnities have been traded in in a variety of ways; and, just for the purpose of the record, I am merely going to define an indemnity as they are presently employed as a 24-hour option either to buy or to sell a commodity for future delivery as they are regularly traded in.

I refer to them as 24-hour options because that is the only form in which they are currently traded. At one time they were traded on a basis of daily, weekly, and biweekly periods. Sometime after July of 1933, when the weekly and biweekly indemnity periods were in effect, trading in indemnities altogether was abolished, because it was felt that the weekly and biweekly indemnities had contributed somewhat to the difficulties that were experienced in all of the speculative markets, both securities and commodtiies, in July of that year—namely, 1933.

Subsequent to that time it was discovered—or, rather, it developed—that the speculative interest in the commodity markets had waned to such a noticeable degree that about 1 year ago, prior to the movement of the expected crop, there was a great deal of apprehension as to the absorbative capacity of the grain exchanges to take the hedges that normally would result from the movement from the farms to the terminal markets.

At that time the exchanges were operating under what was known as a code of fair competition pursuant to the Agricultural Adjustment Act and the National Recovery Act. The grain exchange codes were administered by the Agricultural Adjustment Administration.

Accordingly, in May of 1935—last year—the code authority was meeting in Chicago to consider certain amendments that were being submitted by various interested people; and in Chicago we had pre-

pared a petition seeking the reestablishment of daily indemnities on a restricted and limited scale.

That petition was sent to the other terminal markets throughout the Middle West and it was signed by representatives of all classes of the trade—commission merchants, receiving houses, elevators, mills and industries, carriers—practically everybody who had at any time had occasion to use indemnities, and they were all heartily in favor of their restoration on the limited basis that was suggested.

That basis, if I may indicate it briefly, was that no one individual could sell indemnities or options covering more than a half million bushels of grain in any 1 day. And, of course, there is no such thing as an open limit on indemnities, because they automatically expire the day after they are sold; and some other limitations were placed upon that class of trading, namely, that they could not be used in lieu of margin deposits—and there were one or two other items mentioned in it.

The program that was submitted to the code authority at that time had previously been formulated by the code committee sometime in the previous fall, in the fall of 1934. On the code committee was a representative or representatives of the Department of Agriculture. And, while they did not have a vote in the code committee, I understand that they made no objections to the proposal of restoring indemnities on the basis adjusted—and if I don't quote the facts correctly about that, I assume that someone will call attention to it.

At any rate, when the code committee had the matter under discussion, it was unanimously agreed among them that that ought to be restored on the basis I have indicated, and accordingly we went before the code authority during the following May with that program.

I presented the matter to the code authority, on behalf of the grain trade throughout the Middle West, representing all the various interests on the different commodity exchanges; and I like to believe that the suggestion was well received. But we never had an opportunity to find out, because it was just shortly after that hearing that the National Recovery Act was invalidated by the Supreme Court.

But rather than go into an extensive discussion of indemnities, and their nature and use and what we believe to be their economic advantages—and I would hesitate to tell you how long it would require to do that, even with my remarkable facility in the way of brevity, and which most of the men won't agree to—I am merely going to refer you to the proceedings before the code authority on that occasion; and I will turn this over to the reporter with the request and the suggestion that the proceedings be copied into the record. I am referring to pages 92 to 104, inclusive, of the official report of the proceedings before the Agricultural Adjustment Administration in the matter of Hearing with Respect to a Code of Fair Competition for Grain Exchanges and Members Thereof, Docket No. C-298, hearing at Chicago, Ill., the date being May 15 and 16, 1935. This is volume 1 of the report of the proceedings that I am referring to, and I turn it over to the reporter and conclude my statement with that suggestion, unless someone has some questions to ask me.

Senator MURPHY. All that you ask to be inserted in this record is pages 92 to 104?

Mr. COUGHLIN. Pages 92 to 104, inclusive, Senator. That is all. That is as full a discussion of the subject as I could give you in a half hour, and I am quite sure you will accept this in lieu of a discussion.

Senator MURPHY. Yes.

(The matter referred to follows:)

Mr. COUGHLIN. My name is James J. Coughlin. My address is 332 South La Salle Street. I live in Chicago, and I am a member of the Chicago Board of Trade.

Mr. Chairman, I hold a substantial and formidable brief in the form of a petition that has been signed by something in excess of 1,500 members of the contract grain markets, including, I believe, all of them, with the possible exception of Minneapolis, and I understand that the petition that was circulated and signed there is now in the mail, or will be, and I assume we will have leave to file it when we receive it.

The petition asks the striking from the code of the provision prohibiting indemnity and for the restoration of trading in daily indemnities upon the basis of a program that has been formulated and unanimously endorsed by the code authority.

The petition states our case, perhaps, as well as we can state it, and I assume that the names of those gentlemen that have been subscribed to it may be considered as witnesses in support of it.

The petition is relatively brief, and I will read it. It is addressed to the Honorable Henry A. Wallace, Secretary of Agriculture, and Hon. W. A. Harriman, administrative officer.

"GENTLEMEN: The undersigned members of the contract grain markets under the jurisdiction of the United States Department of Agriculture respectfully represent that there was included in the code of fair competition heretofore adopted by and on behalf of the licensed grain exchanges of the country, a provision prohibiting trading in indemnities in the contract markets.

"This provision has been operative for more than a year, and it is the considered judgment of the grain trade and others similarly situated that it has worked to the disadvantage of the marketing system in that it has greatly reduced the volume of trade and the breadth of interest and, as a consequence, has made the markets extremely sensitive and abnormally susceptible to minor influences that have been reflected more conspicuously than their true economic significance would warrant.

"We believe that experience has been abundantly shown that price levels to producers of grain have been infinitely more profitable during periods of active interest in the futures markets, and that it necessarily follows that a narrowing or serious reduction of such interest, through constriction or otherwise, particularly during periods of heaviest movement from farms, may easily result in the marketing of such grain at prices substantially lower than are justified by then-existing and prospective fundamental conditions.

"We recognize that in the existing confusion of conflicting elements there is probably no single solution to the question of a satisfactory adjustment of agricultural problems, but we do believe that a broad and continuing interest in the futures markets may well be regarded as a healthy and salutary development.

"In our judgment, the progressively decreasing interest in the futures markets may well encourage the consideration of any economically sound and proper stimuli that may reasonably be expected to provide a basis for an expanded interest and participation, without which some considerable apprehension as to the capacity of the futures markets to absorb the impending volume of hedging is justified.

"In our judgment, the restoration of daily indemnities would, as heretofore, result in a substantial broadening of the capacity of the futures markets to absorb the great volume of hedges necessarily attendant upon crop movements and, to that extent, furnish an infinitely more liquid market than exists at present, thereby not only resulting in a higher price level but likewise reducing the necessary price differential between farm and terminal.

"We further respectfully show that a subcommittee of the grain exchange code authority on November 19, 1934, after a careful and exhaustive consideration of the subject, recommended to the code authority the restoration of trading in daily indemnities on a modified and restricted basis, as follows:

"1. That purchases or sales in excess of 500,000 bushels of bids or offers by any one individual, firm, or corporation be not permitted in any one market in any one day.

"2. That such indemnities be cleared through the exchange clearing house.

"3. That reports of all such transactions be made to the Grain Futures Administration.

"4. That such transactions shall not be accepted in lieu of margins.

"That thereafter, on May 3, 1935, the grain exchange code authority unanimously endorsed and approved the proposals above set forth, and so advised the Secretary of Agriculture. The undersigned, therefore, respectfully request the amendment of the grain exchange code, and any other Executive order that may be necessary, to the end that trading in daily indemnities in strict accord with the policy herein specified be restored on the contract markets.

"Respectfully submitted."

There are appended the signatures of more than 1,500 members of the Chicago Board of Trade, Kansas City Board of Trade, St. Louis Merchants' Exchange, Buffalo Exchange, Duluth Exchange, New York Produce Exchange, if I have not already included that; and, as I stated before, the signed petition from the Minneapolis Exchange is on the way here. I am so informed.

Now, with respect to this question, gentlemen, I am not going to discuss it at very great length, for the reason that the Department of Agriculture and the Grain Futures Administration already know as much about indemnities as I could possibly hope to tell them, if my knowledge were half as broad as theirs, in 2 or 3 weeks' time.

Our interest, primarily, and I suppose this will be subject to some criticism and possibly some doubt, is fundamentally in the marketing system.

We are not speaking on behalf of any single group of traders, although all of them are entitled to fair consideration and fair and reasonable treatment. These petitions have been signed by every class of trade that we have. I mean by that, every branch of our trade is represented, both brokers, floor traders, commission houses, millers, bakers, industries, manufacturers of all sorts.

They have been unanimous and are unanimous in their approval and endorsement of this program because they understand, as we have tried to point out to you in the petition, that if there is one thing more than any other thing that is necessary in the marketing system at this time it is an infinitely broader interest than we have.

The Grain Futures Administration will bear me out in this, that recently—and I do not know for how long a period backward—there has been a progressively decreasing interest in the futures market.

Now, of course, those who are opposed to speculation will undoubtedly get a great deal of satisfaction out of that, but the fact remains that in the speculative markets there lodges the ownership of grain after it has been moved off the farms, or until it is ultimately in the consumptive channels.

If that is not true, then there is no excuse under the sun for a futures market, speculative or otherwise; and if that were true, I would hardly have face or grace to appear here this afternoon in support of this petition.

We do know that this open interest has been steadily decreasing, and there is very considerable apprehension on the part of the entire trade, so far as I know—and I know no one has spoken to the contrary—that when a crop movement comes along, as it will presently, with its attendant volume of hedging, there is a very serious danger of something more than an ordinary price collapse.

We are extremely apprehensive about that, partly for selfish reasons and partly because of our interest in the market generally.

Our selfish reasons are simply this—that is, that if such a situation should develop, unquestionably the exchanges will have to bear the brunt of criticism for it, when, as a matter of fact, they are no more chargeable with it than a new-born infant might be.

To what extent the trading in daily indemnities will increase the volume of trade we have no means of knowing. We are not pretending to make any specific representations upon that point.

We do know this—experience shows it and everyone who is familiar with the operation of grain exchanges readily admits it—that it being a form of insurance for open commitment, it necessarily induces the making of open commitments as it has so freely in the past.

The open commitments are your market interest. The more you have of them, the broader your market is, and breadth of interest being what we are seeking, we feel restoration of trading in daily indemnities will to some extent, be it great or small, we have no way of knowing, will be a distinct advantage.

So much from the speculative side.

It is a matter of common knowledge, I think, that the carriers, the terminal elevators, the industries, mills to some extent, have used privileges. Mr. Paul Mehl, of the Grain Futures Administration, has a very excellently prepared pamphlet on the subject and has indicated they are used to some extent by manufacturers and processors, but he does not say it is very great.

Well, be that as it may, I think there is some connection between his statement and what the evidence of the past few years will show. In the other days, when we did have indemnity trading, we had broad markets. The industries making the trades were not in nearly as precarious position as today, because of the breadth of the existing markets, and perhaps they did not feel the need of using indemnities, but the fact that other speculators did use them to protect their commitments and maintain their commitments was the very thing that perhaps made it unnecessary for a lot of carriers and cash grain interests to do the same thing.

I notice, likewise, another conclusion that Mr. Mehl drew in his pamphlet, which is practically the only thing in his book that I am going to disagree with him about, and that is this:

He made the statement that perhaps the use of indemnities was not a particularly profitable thing, because the record would seem to indicate that they were not exercisable oftener than they were exercisable at a profit.

Of course, the rather paradoxical thing about that is, the majority of people who do buy indemnities to protect open interests very earnestly pray they won't be good. They are simply purchased as a form of insurance, the same as a man buys a policy of insurance on his own house and very earnestly desires he will never have to collect on it.

That practically is the only observation that Mr. Mehl made that I thought perhaps was subject to criticism.

The uniformity of endorsement and approval by the entire trade of this request that is being made, it seems to me, is perhaps all of the proof that were necessary.

But, more than that, I submit that the unanimous approval of it by the Code Authority, and, in fact, it is the Code Authority's own program, certainly ought to prove our case as conclusively as I could hope to prove it.

This program is not by any means the program of a group of irresponsible speculators who hope to prey upon the innocent public or anybody else.

They have a very definite and fixed place in the marketing system. And I want to call your attention to the fact that on the code committee that approved this program and helped to formulate it are two representatives of the Department of Agriculture, one, the Assistant Chief of the Grain Futures Administration, my good friend Mr. Mehl, whose admitted knowledge is unquestioned. The other, Mr. Arnot, who was formerly president of the Chicago Board of Trade, and now consultant in the Department of Agriculture, and who, therefore, can reasonably be presumed to have a viewpoint both of operation and regulation.

And as a consequence his approval of it, it seems to me, ought to carry very substantial weight.

Now, I just want to make one further observation, and I suppose I am damned and condemned for it, but I am going to do it nevertheless, because it occurs to me that this program that we are submitting here is more or less related to the question of marginal requirements, and I want to answer one statement that Mr. Huff made, because it was so grossly inaccurate that I would dislike very much to see it go uncontradicted, and that was Mr. Huff's suggestion that perhaps the real interest of the men who appeared here in behalf of a broader and more liquid market would be that there would be wider and greater and more unfair liquidation, and we might possibly profit by those.

Well, of course, the history of the market is this: That the thinner the market, usually the wider the range; and the broader the market, the narrower the range.

I might give what I consider an example. This week I had an order to sell 180,000 bushels of September corn. I started to sell at 78¾ and finished at 77. I think possibly it sold below that later on. I have seen the time when I could save sold 10 times that amount within a quarter of a cent.

The fact of these markets being so narrow and being so restricted, instead of narrowing the range to the disadvantage of the professional trader, has infinitely widened the trade. I have seen it.

I do not like to be constantly reminiscing, because you do not care about my history, but when we have traded in 10 times the volume we are today, within a range half as broad, in those times we had indemnities but we had great conflicting interests on both sides of the market all of the time.

There were buyers and sellers. There was not the case of the market running away on one side or running down on the other. The broader the market, the narrower your range, and that is where your real stability comes from.

The more you even the market up, that is when it gets into a real dangerous position, particularly for the hedger who is sending out his overnight bids or making his overnight offers, because those are sent out on the basis of what that hedger thinks he will be able to do in the morning.

Now, if he is in a narrow, sensitive market, moving in a very broad range, frequently without any trade at all, and we see that happen every day now where the market moves a half, three-quarters, or a full cent without the stuff being traded in, that means he must widen his differential between what he is bidding or what he expects to put out or cover his hedge at.

So instead of a broad market working to the disadvantage of the producer, it is—it has directly the contrary effect.

That is what we are asking for—not on behalf of any single group but the members of the marketing system as a whole.

When you finally devise some mechanism that will supplant the speculative markets as they now exist, which, after all, are speculative on one side because hedging is not a complete transaction, that is just the sold side, someone has to be on the other side and assume that risk.

When you find a way to supplant that with better mechanism, possibly we can subscribe to some of the theories advanced this afternoon, but until that time comes we have to make the best of what we have, and we suggest this as an improvement over what we have.

Thank you.

Presiding Officer GIFFORD. Mr. Coughlin, have you copies of your petition with you—more than one?

Mr. COUGHLIN. I only have the original, and I would like to leave it with the clerk. These are signed.

Presiding Officer GIFFORD. How many copies do you have?

Mr. COUGHLIN. There is one copy for each of the exchanges.

Presiding Officer GIFFORD. You are proposing to leave them?

Mr. COUGHLIN. I am proposing to leave them, and I would like to have leave to file the Minneapolis petition when it gets here.

Presiding Officer GIFFORD. The petitions referred to by Mr. Coughlin will be made a part of this record by reference, for the reason that there is but a single copy, and they will be ordered delivered to James K. Knudson, chief hearing clerk, and by him preserved as a permanent file in the file of this case, and we will give him permission to add the petition of the Minneapolis exchange upon its receipt.

Senator MURPHY. You have something further, Mr. Sturtevant?

Mr. STURTEVANT. Mr. Chairman, just one brief statement. We want to make this very clear for the record, that at no time or through any witness do we intend to convey to the committee the thought that the Grain Futures Administration is approving any of the propositions which we have presented to you—and that applies particularly to this last one of privileges and indemnities. If Mr. Coughlin left that impression, I am sure he did not intend to do so.

Now, I would like to file with the committee 36 telegrams and 2 letters.

Senator MURPHY. Pardon me. Have you given us this amendment which you suggested in respect to that?

Mr. STURTEVANT. Yes.

Senator MURPHY. We have that?

Mr. STURTEVANT. Yes. Our amendment is that on page 9, paragraph (B), lines 14 to 17, inclusive, be stricken from the bill.

Senator MURPHY. Have you put that in written form?

Mr. STURTEVANT. No, sir; but we will. We are going to file this with the secretary.

Senator MURPHY. I wish you would. It is easy to overlook these.

Mr. STURTEVANT. We have arranged with the secretary to file all of our amendments with him.

Senator MURPHY. Will you file them in duplicate?

Mr. STURTEVANT. Yes; we will file about 25 copies.

Senator MURPHY. When will you file them?

Mr. COUGHLIN. The secretary stated that it would be satisfactory if we mimeographed them.

Senator MURPHY. I was just wondering if we could give the folks following you the benefit of them. They do not have copies of them now?

Mr. COUGHLIN. I guess each one of them has it as read into the record.

Senator MURPHY. Unfortunately, that record isn't out until tomorrow.

Mr. STURTEVANT. We will do the best we can, Mr. Chairman.

I desire to file with the committee 36 telegrams and 2 letters, each one of which is from a cooperative grain organization. I have no intention of reading these into the record. I would like to read the first one. It is from Pollock, S. Dak., addressed to C. D. Sturtevant, chairman, National Committee on Grain Affairs, Mayflower Hotel, Washington, D. C.:

Representing 200 grain producers, we protest passage of bill H. R. 6772, as this bill hinders efficient and low-cost marketing of grain.

Signed by the Pollock Farmers Elevator Co.

The other letters and telegrams are of similar purport and they are filed for the purpose of showing to the committee that there are at least 38 cooperative organizations operating grain elevators who are opposed to the present legislation.

That is all I have, Mr. Chairman.

Senator MURPHY. Then you rest your case?

Mr. STURTEVANT. Yes.

Senator MURPHY. The gentlemen representing the opposition, the butter-and-egg industry, are they present?

Mr. FOX. We are ready, Mr. Chairman.

Senator MURPHY. As I remember it, you asked for a half hour this morning?

Mr. FOX. Yes; about a half hour.

Senator MURPHY. Very well.

STATEMENT OF MICHAEL E. FOX, VICE PRESIDENT, PETER FOX SONS CO., CHICAGO, ILL., AND PRESIDENT OF THE CHICAGO MERCANTILE EXCHANGE

Mr. FOX. My name is Michael E. Fox. I am vice president of the Peter Fox Sons Co., a corporation of the State of Illinois, with its home office in the city of Chicago. The company was founded

in the year 1897. It has branches in the States of North Dakota, South Dakota, Kentucky, and Tennessee. It is engaged in the buying, concentrating, processing, shipping, and distributing of butter, eggs, poultry, and potatoes.

I am president of the Chicago Mercantile Exchange, of Chicago, Ill., a nonprofit corporation organized under the laws of the State of Illinois. As disclosed in its charter, the exchange was formed—

to furnish a convenient meeting place where its members may buy and sell butter, eggs, and other commodities; to promote uniformity in the customs and usages of the trade; to gather and impart to our members general information useful to them; to facilitate the speedy adjustment of any business disputes that may arise among its members; and to secure the full benefit of cooperation in the furtherance of their legitimate pursuits.

Under a rule of the exchange any white, male, American or Canadian citizen of legal age, good character and credit, is eligible for membership. At the present time the exchange has 475 individual members in good standing, among which are representatives of the principal butter and egg farmer cooperatives, and principal independent concentrators, processors, and distributors of the country.

I appear before this committee to most seriously request that butter and eggs be stricken from H. R. 6772. I base this request primarily on the fact that the butter and egg industries have had no opportunity to be heard on the merits of the legislation as it relates to butter and eggs. Moreover, in its passage through the House these commodities were not publicly mentioned. Again: I have been unable to find anywhere in the records of the legislation a report or recommendation from the Secretary of the United States Department of Agriculture concerning the desirability or necessity for their inclusion. I may say, further, that representatives of the farmers' cooperatives are constant traders on the exchange, and not one of them has expressed to the exchange a desire for this legislation, and I cannot find anywhere in the record of the legislation such a request from them. However, the committee has before it the requests of various farm organizations to enact H. R. 6772 "to amend the Grain Futures Act." So far as I have been able to discover, these requests are from organizations that are primarily interested in grain and they have no more than a mere incidental interest in butter and eggs, from either the production or marketing standpoints. Without such an interest their competency to guide legislation of this character may, and should be, questioned.

In view of the foregoing it is clear that the public record of this legislation, as it relates to butter and eggs, contains no demand for it in its present form as an appendage to the Grain Futures Act, and on behalf of the people I represent, I respectfully request and urge that these commodities be entirely eliminated.

If, in the wisdom of the committee, based upon undisclosed information in its hands, it appears that butter and egg exchanges should be regulated by the Federal Government, then I respectfully request that regulatory legislation be enacted only after public hearings where those having primary interests in these commodities may have an opportunity to be heard, and when such legislation is enacted that it be in such form as will square with the facts and

circumstances surrounding the production and marketing of butter and eggs.

I am not competent to discuss the Grain Futures Act, nor the marketing of butter and eggs in connection with it. I am not competent to discuss the production and marketing of grain, but I believe I am competent to submit to you a few butter and egg facts with which any beneficial legislation must square. It is then for you to determine whether the proposed legislation so squares, whether the butter and egg interests should be granted a thorough hearing, or whether entirely new legislation to cover the particular field of butter and eggs is indicated. I submit the following:

(1) Recent estimates made by the United States Department of Agriculture for the calendar year 1935 disclose that farmers received from the sale of the following commodities the amounts mentioned:

Poultry and eggs	$592,000,000
Dairy products	1,249,000,000
Cotton and cottonseed	722,000,000
All grains	600,000,000

(2) It is estimated by the same authority that cream is produced on several millions of farms, and eggs on something over 5,000,000 farms, all of which farms are scattered throughout the entire length and breadth of the United States.

(3) It is common knowledge that in addition to the farm production of eggs there are thousands of back-lot producers in all villages and towns. Still others are located in many areas surrounding our great cities. In recent months the number of egg producers have been augmented by the activities of the Federal Government in establishing certain classes of citizens on subsistence farms. Most all of these producers produce surplusses beyond their own needs and they are marketed through a great variety of agencies.

(4) The production of cream and eggs is by no means of a seasonal character, though they have their peak seasons. They are being produced every day in the year in widely scattered areas throughout the entire country. They are constantly flowing to market through a great variety channels in great volume. From a practical standpoint, every day in the year in production, processing, and marketing is a history unto itself, and ownership in commercial channels, at any particular time, has heretofore been impossible of determination.

(5) Current sales of cream and eggs by producers are made on a cash basis and in very small lots. The average amount of cash involved in each transaction is something in the neighborhood of $2.

(6) The commodities are extremely perishable.

(7) The consumption of butter and eggs is less stable than the consumption of other food products as, for example, grain products.

(8) There are no authentic figures to show the number of persons engaged in handling eggs. It is common knowledge, however, that there are thousands of them at both the shipping and distributing ends. They operate independently of each other. They all compete with each other to procure in the first instance and to sell in th second.

The same is true concerning cream buyers at the procurement end. It is estimated that there are approximately 5,000 creameries and butter-making establishments, with uncounted hundreds of widely scattered independent and competing cream buyers.

Regulatory legislation that will insure the free flow of butter and eggs from the farm to the table of the consumer must take into account at least all of the factors and incidents I have mentioned. The exchanges have taken them into account with the result that all of the many and diversified interests have been weighed against each other and have been well balanced, so that today this commerce flows freely and without the alleged burdens and obstructions which gave rise to the Grain Futures Act.

Legislation to regulate the butter and egg exchanges must take into account the interest of over 5,000,000 farmers and thousands of other producers; also the interests of the uncounted thousands of other citizens whose interests are involved, and last, but not least, the sum of $1,841,000,000 which was paid in cash to farmer producers.

I respectfully suggest to the committee that the magnitude of the subject under discussion is sufficient in itself to justify the striking out of butter and eggs from H. R. 6772, and if the public welfare demands the regulation of the butter and egg exchanges by public authority, that the demand be met by new legislation of an exclusive character.

In support of my suggestions and in conclusion I submit that so far as I know, and so far as the public generally knows, no portentious clouds appear on the financial horizon of cream and egg producers. This leads me to the final conclusion that there is no need to hurry this legislation. On the other hand, every sign points to the need of deliberate and painstaking care on the part of this committee.

Mr. Fox (continuing). Now, I have just one letter here that you may want to put into the record, from a cooperative milk pool, that expresses an opinion on this. They were unable to attend this meeting.

Senator MURPHY. All right; we will let it appear in the record.

(The letter referred to follows:)

MILK POOL PRODUCTS COOPERATIVE,
Oshkosh, Wis., April 14, 1936.

Mr. MIKE FOX,
President, Chicago Mercantile Exchange, Chicago, Ill.

DEAR MR. FOX: I am very sorry that the notice of definite hearing date caught us with no possible chance of sending our representative with you to Washington for the hearing on the bill known as H. R. 6772, report no. 1431.

We are quite vitally interested in this bill and would like to emphasize the fact that the amendment including butter and eggs should be eliminated from the present measure and that, if the House of Representatives or Congress finds it necessary to pass a law regulating exchanges handling butter and eggs, this should be done only after a complete and independent hearing on a separate bill for that purpose. Butter and eggs are something that must be sold on exchanges practically every day and it is necessary that the exchanges have enough freedom to cope with the different emergencies of the business.

Our association stands ready to give you any assistance whatever at the hearings on this bill, if you will notify us just what day the hearings will be held, and if it is possible for us to get there, either myself or Mr. Weis, vice president, will make every effort to appear.

Hoping your trip will be a success, I am,

Yours very truly,

MILK POOL PRODUCTS COOPERATIVE,
WALTER M. SINGLER,
President and General Manager.

Senator BULOW. Mr. Fox, does your statement represent the opinion of the butter and egg members of the industry?

Mr. Fox. The Chicago Mercantile Exchange, as I said in my statement, has members all over the United States.

Senator NORRIS. That exchange is different from the exchanges represented by the Chicago Board of Trade?

Mr. Fox. In very many respects they are different.

Senator NORRIS. You do not occupy the same offices or quarters, do you?

Mr. Fox. Oh, no.

Senator NORRIS. You said at the beginning of your statement that you were vice president or some other official of some corporation. That was a nonprofit organization?

Mr. Fox. No; you got me wrong, Senator. I said the Chicago Mercantile Exchange was a nonprofit corporation. I said I was vice president of Peter Fox Sons Co., which was a corporation engaged in the butter and egg business.

Senator MURPHY. The Chicago Mercantile Exchange was nonprofit, didn't you say?

Mr. Fox. Yes.

Senator MURPHY. Are you organized like, and is your organization patterned after, that of the board of trade?

Mr. Fox. To some extent it is patterned along the lines of the rules of the board of trade.

Senator MURPHY. Have you disciplinary committees such as they have?

Mr. Fox. Yes. The board of directors of our exchange acts as the disciplinary committee.

Senator MURPHY. Have you ever expelled anybody from your exchange?

Mr. Fox. We have suspended a good many at times, but I don't recall of an instance where we have expelled anyone.

Senator NORRIS. Does this exchange deal in futures?

Mr. Fox. The members deal in futures on the exchange.

Senator NORRIS. On this exchange?

Mr. Fox. Yes.

Senator NORRIS. You hedge just like you do on other exchanges?

Mr. Fox. Yes, sir.

Senator NORRIS. Are there those who are purely speculators that operate on this exchange?

Mr. Fox. There are some; yes. We need them, or otherwise we would not be able to operate at all. However, there isn't as much public participation in our market as we should like to see. One reason for that is the fact that it is practically new; it is only about 15 years old.

Senator NORRIS. Has it been growing?

Mr. Fox. It has been steadily growing.

Senator HATCH. You have the same system of procedure that they use on the board of trade?

Mr. Fox. I wouldn't be able to answer that exactly; I am not familiar enough with it. I am speaking about the rules in general. The principal rules are more or less the same, except that I believe that in some respects we have probably been what you might say "tighter" with our members than the others may be.

Senator NORRIS. How much of a membership do you have?

Mr. Fox. Four hundred and seventy-five.

Senator HATCH. The House didn't enter into any discussion of the butter-and-egg exchanges in their hearings?

Mr. Fox. Not at all. This was included in the bill as it came out of the House committee, as I understand it. Our committee here at that time were sitting in at the hearings, expecting that something might come out; but not a word was said in the hearing about it, and consequently we thought it would not be included. But after it came out of the House, it was in there.

Senator NORRIS. After it came out of where?

Mr. Fox. The House committee.

Senator NORRIS. The butter and eggs were included as an amendment on the floor of the House?

Mr. Fox. Yes.

Senator NORRIS. Did you follow the discussion there and see what was said?

Mr. Fox. No; and we really don't know why they were included at all. We haven't been able to find anywhere why butter and eggs were included in the bill.

Senator NORRIS. Well, of course if it was included by the men on the floor of the House—and, from what you say, it must have been, although I don't pretend to know—that of itself would have probably led to a debate and discussion in the House, at least giving the alleged reasons why it was put in.

Mr. Fox. The members of our exchange will speak later, and I think possibly we might have some information on that.

Senator MURPHY. Why is it that you are unprepared here to make that statement? These hearings are on this act, you know.

Mr. Fox. We understood for some time that there wasn't to be any hearing on this at all, and that the hearings by the House committee were going to be final as to this particular act; that we were not going to have an opportunity to have a hearing, until we found out about a week or 10 days ago.

Senator HATCH. Your members have been notified. You have had an opportunity now.

Mr. Fox. We have had a few days on it; yes.

But it strikes us that the bill as it stands does not seem to fit into the butter-and-egg picture. We are perfectly willing, if the Government feels that we should be regulated, that we go in on the proposition after an investigation as to what is best.

But, as it stands today, the two commodities don't seem to fit into it at all. If you stop to realize that the one is a highly perishable commodity as against the other, which is a staple and year-round commodity, the one we have year-round production and the other has to be handled every day.

Senator MURPHY. All right. Thank you very much. You were speaking for those other two gentlemen who were with you, were you?

Mr. Fox. No; Mr. Poole has a brief statement.

Senator MURPHY. All right, Mr. Poole.

STATEMENT OF COURTNEY L. POOLE, PRESIDENT OF THE NEW YORK MERCANTILE EXCHANGE, NEW YORK CITY

Mr. POOLE. Mr. Chairman and gentlemen, my name is Courtney L. Poole, president of the New York Mercantile Exchange. I am also president of C. L. Poole & Co., engaged in the distribution of butter and eggs in New York. I am not a member of any clearinghouse or such exchange and I do not trade in futures, and consequently I speak totally unbiased and the sentiments of the membership of our exchange.

On behalf of the members of the New York Mercantile Exchange, composed of over 400 active members engaged in the distribution of butter and eggs and trading both on spot and future boards, I wish to register our objection to the proposed amendment to the Commodity Act (H. R. 6772).

We are not opposed to the principles of the bill, but our objection is predicated on the fact that we represent the largest agricultural industry in the United States and should not be linked by legislation to any other commodity with which we have nothing in common. According to the United States Government figures for the fiscal year ending July 1, 1935, dairy and poultry products led all agricultural fields. The figures in round numbers computed on farm values are as follows:

Dairy and poultry products	$1,765,000,000
All animal meat	1,665,000,000
Cotton	800,000,000
Wheat, corn, and all grain	800,000,000

These figures show that the volume of business transacted in butter, eggs, and poultry in the United States is more than twice the volume of cotton or of the combined sales of wheat and all other grain.

We are, therefore, reluctant to be placed under the control of the Department of Agriculture with no assurance of greater progress being achieved under the control of more or less inexperienced governmental agencies than under the control of those trained in the management of butter-and-egg exchanges.

It is felt that the bill was primarily designed for grain-trade regulation and that conditions in the butter-and-egg trade are very different, because both butter and eggs are constantly being produced in this country, while the crop seasons in grain are short.

We believe that restrictions on the privilege of an individual to buy or sell will impair the producing interests rather than help them.

We feel that the reaction will unquestionably be detrimental to the producer, because large operators will be compelled to curtail their activities due to lack of opportunity to hedge against their holdings.

In the case of eggs there are many grades or classifications, which are not salable on the future board. We believe that we should have the right to sell eggs short on the future board as a hedge against other holdings. In other words, we want the privilege of selling something we do not possess as a hedge against losses in carrying something we do possess, in order to protect the producers' markets during the flush of production.

We believe that if eggs and butter futures are included in the present commodity bill, that it will undoubtedly curtail trading in futures to such an extent that future boards on commodity exchanges handling butter and eggs will practically become useless.

Should Congress feel that control and regulation of butter and egg futures be a necessity, I suggest that they embody this in a separate measure after complete investigation and hearing.

Therefore, we recommend that butter and eggs, now appearing in the amendment, be deleted.

Senator MURPHY. Thank you very much.

Senator NORRIS. Let me ask you—what exchange do you represent?

Mr. POOLE. The New York Mercantile Exchange. There are practically only two exchanges in the United States extensively engaged in handling butter and eggs.

Senator NORRIS. That is the question I was leading up to. I wanted to get an idea about how many there were. Yours and the Chicago exchange are practically the only ones?

Mr. POOLE. Yes. The St. Louis Merchants' Exchange, as I understand, wasn't developed.

Senator NORRIS. And on the Pacific coast?

Mr. POOLE. None to my knowledge.

Mr. FOX. Mr. Francis A. Donnelly, Mr. Chairman.

Senator MURPHY. Very well, Mr. Donnelly.

STATEMENT OF FRANCIS A. DONNELLY, NEW YORK CITY, REPRESENTING NEW YORK MERCANTILE EXCHANGE AND PACIFIC EGG PRODUCERS COOPERATIVE, INC.

Mr. DONNELLY. Mr. Chairman and gentlemen of the committee, my name is Francis A. Donnelly, of 178 Duane Street, New York City. In addition to representing the New York Mercantile Exchange, I also represent Pacific Egg Producers Cooperative, Inc., an organization whose membership includes approximately 24,000 commercial poultry producers on the Pacific coast. Our cooperative members are not prepared to pass on the desirability of the Commodity Exchange Act, insofar as it relates to commodities other than eggs, but we do oppose the inclusion of that commodity in the scope of this act.

We do not believe that governmental regulation should be exercised when such regulation can be avoided, and so far as eggs are concerned, there appears no demand from the industry for it, and no complaint of the methods of operation of the egg exchanges. Supervision or regulation imposes upon the Government and the industry unnecessary expenses which cannot be afforded at the present time, and which at all times are undesirable. We feel that insofar as the commodity in which we are principally interested is concerned, the proposed act will accomplish no benefit whatever, while the expense loaded on the industry by reason of the various provisions of the act would increase the cost of distributing eggs from the producer to the consumer, thereby reducing consumption and doing damage to the producing industry.

The act, we think, would restrict certain forms of hedging which we believe should not be so restricted. For instance, in the egg industry, hedging cannot always be executed with the same grade of eggs as are stored, so that actual eggs are often not deliverable on the hedge contract.

Senator NORRIS. I think you have a future delivery for eggs.

Mr. DONNELLY. Yes, sir.

Senator NORRIS. From the very nature of things that would follow, wouldn't it? The future does not contemplate that the eggs would not be delivered?

Mr. DONNELLY. What I mean there, Senator, is that we handle a grade of eggs which is not traded in on the futures board. We handle Pacific coast whites, and they don't trade in that grade of eggs on the Chicago Mercantile Exchange. But we can hedge on the Chicago grade of standards against our actual holdings of Pacific coast white eggs.

Senator NORRIS. I am interested in that. You hedge because of——

Mr. DONNELLY. We don't buy our eggs, Senator. Our members produce them and we sell them for our members. And in the spring our cost of production is usually considerably higher than the cost of nearby or midwestern products. We therefore must take a chance and store those eggs in the hope of a better market later, because we can't get our cost out of them then.

Senator NORRIS. Is it practical, speaking in a very general way, to store eggs if the prices are unsatisfactory, or is it preferable to store them with the idea that you are going to get a better price because your product is deteriorating every day?

Mr. DONNELLY. It doesn't deteriorate quite as fast as you think, perhaps. Our modern storage eggs will hold up quite a few months in good condition. But, to answer your question, it is practical.

Senator NORRIS. That is true that they do deteriorate every day, is it not?

Mr. DONNELLY. Of course, they don't get any better; yes.

Senator NORRIS. Well, they ultimately reach a point where they aren't good, except for use in political meetings and such things?

Mr. DONNELLY. Well, that point isn't reached for quite a number of months. We don't carry over from one season to another; that would be disastrous.

Senator NORRIS. All right.

Mr. DONNELLY (resuming statement). Mention is made in the act of Government standards, but each exchange has its own standards, acceptable to the trade generally. There seems to be no need for another set of grades when those already in use are satisfactory to the membership traders and the industry generally, and which grades on these exchanges are well enforced.

Restrictions relating to amount of speculation and maximum fluctuations to be permitted in the market from day to day are not needed in the egg industry, inasmuch as the right to speculate does not appear to have been abused to the detriment of producers or consumers.

We believe that substantial short selling is as necessary as substantial buying for the development of a broad future board which can absorb heavy liquidation or heavy buying demand without sharp price fluctuations. It is our belief that the present method of handling future trading on the egg exchanges without additional restrictions makes for the general merchandising of eggs on a narrower margin. We feel that the restrictions provided for in the Commodity Exchange Act would limit such trading in an undesirable manner.

So far as egg exchanges are concerned, the various States, we think, impose adequate restrictions covering trading within their boundaries. There are only two exchanges in the country, one located in Chicago, the other in New York, in which future trading in eggs in any substantial volume is done. These exchanges are well

organized, maintain high standards for their membership, and enforce strict rulings. Why it is necessary or desirable for the United States Government to regulate transactions on them is not clear.

We are in accord with the provision of the act which aims to prevent discrimination by the several exchanges against cooperative associations as members, but we know of no case where a bona-fide cooperative egg-distributing organization or its representatives have been kept out of an egg exchange merely because the organization was cooperative in structure or the individuals were associated with a cooperative association.

Our own organization holds five memberships in the New York Mercantile Exchange and three in the Chicago Mercantile Exchange.

Senator NORRIS. Why do you hold so many? Why wouldn't one accomplish that?

Mr. DONNELLY. Well, in the New York Mercantile Exchange we have five memberships. It is not always convenient for one to attend. We meet there every morning and, with other merchants, we make trades on the floor; we make business contacts.

Senator NORRIS. Well, is it expensive to maintain those memberships?

Mr. DONNELLY. Oh, no.

Senator NORRIS. What does it cost you per membership?

Mr. DONNELLY. Why, I think it is about $50 a year. I am not certain on that. Mr. Poole, who preceded me, I think could tell you exactly.

Mr. POOLE. The dues are $50 a year, and the dues are individual and not firm or corporation.

Senator CAPPER. Do you know where this comes from—your inclusion in the bill? That is, are there any organizations or any parts of the industry seeking or asking for it?

Mr. DONNELLY. I never heard of it, Senator. I don't know who sponsored it or asked for it. I don't know who put it in. The first knowledge I had of it was about a week ago or so.

Senator NORRIS. That is a little bit queer to me that nobody seems to know how it got here.

Mr. DONNELLY. It is very true, Senator.

Senator NORRIS. I haven't looked it up, but I have an idea if we would look up the record we would get some idea about that.

Is there any division among your people, so far as you know, about the desirability of being included in this bill?

Mr. DONNELLY. As far as I know, there is no division of opinion among our membership.

We know nothing about the desirability of the other bill. We don't profess to know a thing about the grain. But we do certainly object to having eggs put into that grain bill.

Senator CAPPER. I haven't met anyone in my part of the country who wants anything of that sort in the bill.

Senator NORRIS. You say you don't know of anyone who does?

Senator CAPPER. No; I don't know of anybody.

Senator MURPHY. Well, Mr. Donnelly, you may conclude your statement now.

Mr. DONNELLY (continuing statement). We think, moreover, that every exchange must have the right to pass on the acceptability of its own members, and we see no danger of this privilege being abused, so far as egg exchanges and egg cooperatives are concerned.

It is our view that the act, so far as it relates to eggs at least, grants powers to the Secretary of Agriculture which are unwarranted and which might be dangerous unless certain emergency conditions require them, and such conditions are not apparent in the egg exchanges.

Senator MURPHY. We thank you very much.

Mr. FOX. Mr. Chairman, I have one more witness, Mr. Tenny.

Senator MURPHY. Could you summarize your paper, Mr. Tenny, and let us have the benefit of a summary of it and just put it into the record as you have it written?

Mr. TENNY. Mr. Chairman, I would like to do that; but I have specifically covered the question that Senator Norris is raising.

Senator MURPHY. Well, suppose you deal with that, then.

STATEMENT OF LLOYD S. TENNY, BUSINESS MANAGER OF THE CHICAGO MERCANTILE EXCHANGE

Mr. TENNY. My name is Lloyd S. Tenny. For the past 7 years I have been business manager of the Chicago Mercantile Exchange, the largest futures market for butter and eggs in this country. Chicago has, for many years, been the important wholesale distributing market for these commodities. While other witnesses have touched upon the importance of our commodities and have presented facts showing the relative importance of butter and eggs compared with other farm crops, it seems important to emphasize the fact that if Congress decides to enact legislation regulating futures trading in butter and eggs, such legislation deserves something better than being an amendment to an amendment to a grain act.

I desire to trace very briefly the history of this measure up to the present hearing. The bill, as originally introduced in the House of Representatives, was H. R. 3009, introduced by Mr. Jones early in the first session of this Congress. In defining the word "commodity", the following were included: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, gain sorghums, and mill feeds.

Because cotton was added, the name of the act was changed from the Grain Futures Act to the Commodity Exchange Act. Please note, however, that butter and eggs were not included. Hearings were held on February 5, 7, and 8, 1935, but not once during this entire period was mention made of including butter and eggs. Apparently up to this point no one had even suggested the possibility of any need for regulation of our exchanges.

On March 15, 1935—that is, a little over a month later—the Agricultural Committee in the House made its report by introducing a new measure as H. R. 6772, the present bill under consideration. No hearings were, of course, held on this measure, and in that form it passed the House of Representatives, with no opportunity for the butter and egg trade to be heard, although in the list of commodities to be regulated butter and eggs had been added by the committee.

Senator NORRIS. In that new bill?

Mr. TENNY. In the bill. Continuing the statement, as far as I can find this measure came to the Senate and then to this committee with these agricultural commodities added, but without one reference having been made as to the need of including butter and eggs or even

any expression from the Marketing Department of the United States Department of Agriculture that any need existed for such legislation for butter and eggs.

The Chicago Mercantile Exchange grew out of a real necessity for organized and regulated futures trading. Many futures contracts were being traded in between individuals long before the exchange was established as a futures market. With a long history of rules making by other exchanges our founders were fortunate in being able to make an exhaustive study of these rules, and out of this grew the system of trading and the rules governing the same for our exchange.

Frankly, we are proud of our exchange and the rules under which we operate. We do not want to see Congress go too rapidly into a regulation of a great national market like ours, handling the most important agricultural commodities of the country, without first making a comprehensive study of the marketing of our commodities and the relation of the futures markets to the entire system.

Let me say that during the past 7 years not a serious complaint has been registered with our exchange that anything covered in this bill and prohibited by it has occurred. With a rather intimate knowledge of Government procedure, I do not think there has been a single instance where action would have been contemplated by the Secretary if this measure had been in force; but I do agree with many other witnesses that the uncertainties that would develop from its passage would seriously hamper trading and as far as we are concerned would, in my opinion, accomplish no good.

I want also to call to your attention that, now the full responsibility of governing our exchange rests with the exchange itself, a divided responsibility is seldom good. Certainly it would seem wise, before including our commodities, to give very careful consideration to the kind of regulations we now have governing our own trading, how such regulations have worked, and whether good or evil would follow if this Grain Act were expanded to include butter and eggs.

The butter and egg business involves a great number of farm producers. Milk and eggs are sold every day of every year. These sales usually represent small amounts and are made to many persons, directly or indirectly interested in the creamery and egg-packing business. All our commodities are extremely perishable. For practical purposes, surpluses are never carried from one year to another. Demand, as reflected by consumption, becomes therefore almost a daily factor in our marketing activities. These facts are all recited solely to emphasize the need of making progress slowly in any legislation affecting any part of our marketing structure.

Legislation affecting grain futures began to be discussed many years ago. The Grain Futures Act itself has been a part of the marketing machinery for years. Amendments have from time to time been offered, but in every case committees of the House and Senate have given opportunities for all branches of the grain industry to be heard. No action has been taken by Congress without such hearings.

Now, on the other hand, the complicated and intricate industries of marketing butter and eggs are to be regulated in another grain measure, under conditions that have never allowed our people any hearings, except this half hour which this committee has kindly consented to give us.

If, therefore, this bill H. R. 6772 is to be recommended for passage by this committee, we earnestly request that you amend the bill, on page 2, lines 10 and 11, by deleting the words "butter and eggs."

We further state that insofar as any producer of butter and eggs is concerned, or any association or group of such producers, we have never in 7 years had a registered complaint of a manipulated market. Even in the light of these facts, however, if the members of this committee feel that there is a need for regulation, we will cooperate to the fullest degree with any investigation you may authorize, to determine the need or kind of such regulation. We do, however, insist that our industries are entitled to something more than a half-hour hearing to this amendment of the Grain Act.

Senator MURPHY. Now, it has been suggested that possibly the purpose lying back of the inclusion of butter, particularly, is that there are wide fluctuations frequently in the butter market.

How do you explain these wide fluctuations in the butter market?

Mr. TENNY. I would say that I doubt whether the fluctuations in the daily price of butter represent anything greater than in peanuts or many other commodities that are not traded in in futures, Mr. Chairman. Certainly I cannot see how any such fluctuation can be registered as a complaint against the exchanges.

We have a spot call. There are wires running out to every part of the country from our floor. There are a hundred or a hundred and fifty brokers present representing all parts of the country. They can make offerings on that board for any person, member or nonmember, and such offerings are being made. They also bid on that board.

On the basis of the trading in our exchange, not only the butter trading but any transactions, they are taken into consideration, and on the basis of those transactions a quoted price is issued each day on the Chicago market.

Now, in the 7 years that I have been there I have never seen a quotation that I thought was out of line with the actual trading that was going on in Chicago. There may have been a marked change in price from the day before, but invariably you will find that there have been some conditions, usually in the way of receipts, that have affected the market very markedly.

For instance, on eggs we have had the largest fluctuation that I have ever seen within the last 2 months—a fluctuation of 6 or 8 cents in 1 day. But that was from Saturday until Monday; and up until Saturday there had been a very light supply, due to weather conditions, while on Monday I think we had some 30 or 40 cars of eggs on track in Chicago that were not there on the Saturday preceding.

Senator MURPHY. All right. Thank you very much.

Senator NORRIS. Did you know they were going to be there?

Mr. TENNY. No.

Senator NORRIS. And the first knowledge you had of them was on Monday morning?

Mr. TENNY. They were there—reported by the Government as arrivals there on Monday morning. We had no information on the movement of freight, either of butter or eggs. We knew nothing about it until they arrived.

Senator NORRIS. I suppose the eggs are shipped to you by various kinds of organizations and individuals?

Mr. TENNY. They were shipped to the members of our exchange and to the trade in Chicago by everybody in the Middle West.

Senator NORRIS. And you regard that as an ordinary occurrence? Don't your members, as a rule, have more notice of what eggs are coming?

Mr. TENNY. The one individual may know from his packer that he is going to have two cars the following day, but he doesn't know what his competitors are going to have, and they don't know until they are reported.

Senator NORRIS. Now, wouldn't it be a good thing for the trade generally, and the consumers, too, if in some way that knowledge was public instead of being unknown until the actual arrival of the eggs?

Mr. TENNY. Very decidedly so.

Senator NORRIS. In other words, in the case you speak of, where you had 30 cars on Monday and nobody knew about it until Monday, if it were known whenever those cars were shipped from the different localities that they were shipped and on the way, it would have been a good thing for the trade?

Mr. TENNY. No doubt about it.

Senator NORRIS. It would have prevented a fluctuation, perhaps, unnatural?

Mr. TENNY. It would have prevented something that was glaring.

Senator NORRIS. Yes.

Mr. TENNY. The price on Monday or Tuesday might have reached the same point, but it would have reached it in an orderly way.

Senator NORRIS. Yes.

Mr. FOX. On that point, Mr. Chairman, in that particular instance, I think on Saturday there was a holiday, so that there were really 2 days intervening. And then, on top of that, I think if the Bureau of Agricultural Economics gives the figures in advance, it would have been impossible in this case, because of delayed truck shipments due to blocked highways. These trucks were blocked for several days on different routes throughout the country, and no man knew when they would arrive.

That was a very extraordinary condition that we would probably have to face no more than once in 5 years.

Senator MURPHY. All right. Thank you.

Now, before concluding the case of the opponents of the bill, at the request of Mr. James C. Murray, of the Quaker Oats Co., who called on me last week, I am presenting for the committee's consideration an amendment to follow on page 6, after paragraph (B). It would come just before line 11.

The preceding paragraph prohibits a net long or a net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the Commission for net long or net short position in such order for or with respect to such commodity.

Mr. Murray explained to me that it was necessary for the Quaker Oats Co. to anticipate its grain needs for a season, and at the time of determining its anticipations, it makes all contracts for advertising and all contracts for packages, labels, and so forth; that it bought its cash commodity and sold futures against that to hedge its position.

The suggested addition is this:

(6) An amount of such commodity, the purchase of which for future delivery would be a reasonable hedge against standard advertised products of such commodity to be sold in packages, where contracts for advertising, package material, labels, and so forth, with respect to such products are made in advance, such purchases to be limited to twelve months' requirements as determined by records of actual sales.

The idea being that it may hedge the amount of grain as determined by its sales in the 12 months preceding. That is as I read it—and we will put it in the record, and the committee can give consideration to it.

Now we are prepared to go on with the proponents of the bill.

Senator FRAZIER. Mr. Chairman, I suppose we are to have the benefit of the report of the Department of Agriculture on this bill?

Senator MURPHY. I presume, Senator Frazier, that when we get through our consideration of it, we will suggest some means of giving consideration to it.

Senator FRAZIER. And I am wondering if the Farm Credit Corporation should not be requested to submit a report. If the Farm Credit hasn't been requested to submit a report, I would suggest that the clerk of the committee get in touch with them and get their views on this measure.

Senator MURPHY. The Farm Credit Corporation?

Senator FRAZIER. Farm Credit.

Senator MURPHY. Surely, we will be glad to have the clerk do that.

Doctor Duvel, of the Grain Futures Administration, expects to go on the stand tomorrow, as I understand it.

You don't care to go on today, Doctor?

Mr. MEHL. Mr. Chairman, my name is J. M. Mehl, Assistant Chief of the Grain Futures Administration. Permit me to say that Dr. Duvel, chief of our Bureau—who is in the room and is well known to many of you—is trying to compromise with his doctor on orders to take things easy for a while. He has asked me to present the general views of the Department, and he will be available to answer any questions that the committee may put to him.

Senator MURPHY. Thank you.

Now, Mr. Goldsmith.

STATEMENT OF IRVING B. GOLDSMITH, CHICAGO, ILL.

Mr. GOLDSMITH. Mr. Chairman, and gentlemen of the committee, my name is Irving B. Goldsmith, member of the law firm of Mayer, Meyer, Austrian & Platt, of Chicago, Ill., counsel for Farmers National Grain Corporation.

I have the privilege of presenting the witnesses in support of the commodity exchange bill now before this committee, as I had the same privilege some 2 years ago in the hearings before the House Committee on Agriculture, which took place on April 3, 4, 5, 9, 11, 12, 13, 16, and 17, of 1934, to present the witnesses in favor of the bill, a bill which was a companion bill to the present bill; that is, it contained substantially the same features, with just one or two changes and additions which have been omitted since the bill was

passed by the House and failed of vote in the Senate due to adjournment of Congress.

I want to make reference to that bill because there is incident to its consideration—and there are some hundreds of pages of the record on it—material which indicates the position of the proponents of the commodity exchange bill as now before this committee. And to expedite the matter and because of the time, and so forth, we shall limit ourselves to attempting to answer, not the old accusations made against the bill that were answered in that hearing, but the new arguments that have sprung up by frontal or other attack in the past 2 years.

So I refer to that report, for the information of the committee, having already given the dates of the hearing.

I also want to refer you to the hearings in the past several years on some of the problems which we are now discussing. First, the hearings on the Grain Exchanges Code, which were held here in Washington in November 1933, for which the transcripts would be readily available to the Senators.

And, second, the hearings before the Agricultural Adjustment Administration with respect to the code of fair competition, which hearings were held in Chicago on May 15, 16, and 17, 1935, just prior to the decision of the Supreme Court of the United States in the *Schechter case*.

A few very brief preliminaries before I call our first witness.

First, what are we here supporting? We are here, and I think it will develop that the heads and leaders of all national farm organizations and all important farm organizations—at least those interested in grain—are here supporting the bill as presently before the Senate, amended as recommended by the Secretary of Agriculture in his letter to Senator Smith, chairman of the committee, which letter is dated June 27, 1935, and to which reference has already been made in these hearings.

For the convenience of this committee, I am going to ask Mr. Cummings to pass out to you copies of that letter that the Secretary of Agriculture addressed to Senator Smith, so that you will have before you the bill as presently before the Senate, and the recommendations made by the Secretary of Agriculture, in which we concur.

And I might say, by way, that our concurrence in the recommendation of the Secretary of Agriculture to change section 6 (a) 2, because of his views that there might be improper patronage distribution, are not concurred in by representatives of the cooperatives, the regional members of Farmers National Grain Corporation, or the farm leaders. But we have felt that with the bill before Congress for some 2 years, there must be some give and take and some compromise if we are to have a bill passed at this session; and in that spirit we support, even though we believe the Secretary should not have made that particular change, we support the bill as now before this committee, with the amendments suggested by the Secretary of Agriculture to Senator Smith in answer to Senator Smith's request for same to the Secretary.

You will note from a reading of the Secretary's letter that he heartily advocates passage of the bill by the Senate with the amendments therein contained.

Second, I shall later, I believe, desire to discuss very briefly some of the legal aspects of the bill, which have been discussed by Messrs. Kirkland and Ellis as counsel for the Chicago Board of Trade.

Mr. Kirkland devoted considerable time in his presentation, and I regret he was unable to be here while I make my statement, to section 10, subsection 5, on page 26, as being probably an improper and unconstitutional delegation of power to the Secretary of Agriculture. That subsection 5 on page 26 provides as follows:

> (5) to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this act.

and Mr. Kirkland mentioned the *Schechter* and the *Panama case*—the "hot oil" case—as indicating that that might give the Secretary too great a latitude.

Of course, I shall waive the reading of those cases to you gentlemen. But, on the constitutional question, I shall be content to mention the report, the second report, of the House Agricultural Committee, signed by Marvin Jones, chairman, and with particular reference to the statement of Mr. Jones.

Senator MURPHY. Do you have the date of Mr. Jones' statement to which you refer?

Mr. GOLDSMITH. The date of his statement appears; I will have that in just a minute—March 18, 1935.

Senator MURPHY. Did that antedate the *Schechter* decision?

Mr. GOLDSMITH. It was prior to the *Schechter* decision, Senator, but, as I was going to state, followed the "hot oil" decision; and he specifically mentions the "hot oil" decision in his report. And, of course, as you gentlemen know, the *Schechter* decision mainly decided on the right of the Federal Government to interfere with intrastate commerce.

Senator MURPHY. Yes.

Mr. GOLDSMITH. Mr. Jones makes the following statement and I think that it is sufficient and it is all I care to say on the constitutional question as it has been raised and discussed in these hearings:

> Constitutional basis.
>
> Ample evidence has been presented before your committee during this and past sessions of Congress to demonstrate the close connection between the price and other aspects of marketing cash commodities in interstate commerce, and futures operations on boards of trade, and practices by traders and others in connection with such futures transactions—

citing the hearings.

> That some of such operations and practices result in a burden on interstate commerce in the cash commodities themselves is a matter of common knowledge, and the hearings referred to emphasize the fact.
>
> Under the doctrine of *Board of Trade* v. *Olsen* (1923; 262 U. S. 1), which upheld the constitutionality of the Grain Futures Act, Congress has the power to regulate so as to remove the burdens and obstructions upon interstate commerce so caused, to foster interstate commerce by making it more certain that a true, fair, and stable price will be established in futures transactions, with the result that the prices of cash commodities in interstate commerce will more accurately reflect their value and artificial obstructions to the free movement of cash commodities in interstate commerce will not exist. That the free movement of such commodities in interstate commerce is a matter of vital national concern is undoubted.

Now, this is a very important part of the report:

Your committee has been careful in the sections of the bill dealing with administrative proceedings to preserve for persons affected by its provisions the familiar rights of notice and hearing and the protection of judicial review of administrative action guaranteed by the Constitution.

Further, it is believed that the standards for administrative action contained in the Grain Futures Act, as it now exists, and the standards inserted in the new provisions proposed to be added by the bill, are adequate to furnish definite and reasonable guides to administrative officers so that the proposed legislation will not suffer from the constitutional infirmity of invalid delegation of legislative power.

Particular attention has been devoted in the bill to conforming to the principles announced by the Supreme Court in the Amazon and Panama Refining cases.

Mr. GOLDSMITH (continuing). I mention that, and I also mention the Olsen case, which I commend to your consideration, in which every conceivable objection was raised to the constitutionality of the Grain Futures Act of 1922. And we are content to leave with your judgment the probable constitutionality of the act in present form as passed by the House.

Senator MURPHY. The lawyers, as usual, find something to disagree on.

Mr. GOLDSMITH. That is right, Senator. Of course the lawyers disagree, and I assume that with the 6-to-3 and 5-to-4 decisions that we have in the Supreme Court, that if Congress were to wait until certain as to the validity of any legislation, it would not be likely to pass.

One further preliminary remark. As stated this morning, Mr. Chairman, when some of the Senators now here were not present, we had thought that the opponents of the bill would occupy the full 2 days.

Senator MURPHY. Well, the opponents of the bill had exactly 7¾ hours——

Mr. GOLDSMITH. No; I wanted only to explain this, Senator, if you please, that because of the fact that we are going on this afternoon, most of our witnesses do not have written manuscripts, such as the witnesses opposing the bill had. We did not care to prepare our statements. We didn't want to repeat what we said in the House hearing, and we wanted to wait until we heard what new the board of trade had to offer. Therefore, if, in making our statements, they do not run quite as smoothly as those of the opponents, I am sure the committee will forgive us, and that those who later read the record will forgive the fact that the remarks are not entirely formal.

I should now like to introduce Mr. C. B. Stewart, president of the Farmers West Central Grain Co., as our first witness; and while he is coming forward I might state that he will discuss section 4a, relating to limitation on trading, which is his main topic.

I should like to point out to the Senators that the act contains no limitation on the amount of speculative futures trading in which anyone may indulge. The act simply permits the Grain Futures Commission, after hearing, to impose such limits. Mr. Stewart.

Senator HATCH. Mr. Chairman, has the letter from the Secretary been placed in the record?

Senator MURPHY. Not of my knowledge.

Senator HATCH. Might I suggest that it be placed in the record?

Senator MURPHY. It will be placed in the record.

(The letter referred to follows:)

JUNE 27, 1935.

Hon. E. D. SMITH,
Chairman, Committee on Agriculture and Forestry,
United States Senate.

DEAR SENATOR SMITH: I have the honor to respond to your request of June 5 for a report on H. R. 6772, which was passed by the House of Representatives June 3, 1935.

This bill is in substance and purpose the same as H. R. 9623, of the Seventy-third Congress, which passed the House June 4, 1934. It is a bill to amend the Grain Futures Act of 1922 by expanding its provisions to cover cotton and certain other commodities in addition to grain. It also strengthens the act generally in light of actual experience in administration. Such experience has demonstrated the need for some limiting power over the speculative trading of large operators who, by force of their own trading, have been able to take advantage of technical conditions in the market to the disadvantage of hedgers and others using these markets. Certain trade practices involving the cheating of customers, or which lend themselves to manipulation, also have been discovered. These must be dealt with more adequately than is possible under present law.

Numerous hearings on similar bills to regulate futures transactions on commodity exchanges have been had. (Hearings on H. R. 4545, H. R. 4661, H. R. 5883, H. R. 7007, H. R. 7235, and H. R. 7608 of the Seventy-second Congress, first session; H. R. 8829 of the seventy-third Congress, second session; and H. R. 3009 of the present session.) Representatives of the Department have appeared at these hearings and have presented the views of the Department. The report of the House Committee on Agriculture (rept. no. 421) contains a comprehensive explanation of H. R. 6772, as well as a statement indicating the general need for such legislation.

The Department's views are in full accord with this report. It has for many years recommended more adequate regulation of speculation and sharp practices on the commodity exchanges.

The Code of Fair Competition for Grain Exchanges and members thereof under the National Industrial Recovery Act, which was put forward by the exchanges as a substitute for legislation, is, of course, without legal effect since the Supreme Court decision in the *Schechter case*. It is of utmost importance, therefore, that means be adopted whereby the Government may be in a position to protect the producer and the public generally against abuses growing out of uncontrolled speculation on public markets.

The Department urges prompt enactment of commodity-exchange legislation as embodied in H. R. 6772 in order to provide producers and consumers alike the protection to which they are entitled and in order also that the commodity exchanges may be able to operate with credit to themselves and with increased market usefulness.

Since H. R. 6772 was reported favorably by the House Committee on Agriculture under date of March 18, 1935, the following suggested changes have been brought to my attention as being desirable:

1. Page 2, line 15, strike the numerals "50" and insert in lieu thereof the numerals "75."

This change is desired by the cooperatives and the farm organizations which sponsored this feature of the bill.

2. Page 2, line 21, after the word "for" insert "or with."

3. Page 10, line 20, after the word "person" insert a comma, in line 21 after the word "contracts" insert a comma, and in line 23 after the word "shall" strike the word "not" and insert "be separately accounted for and shall not be commingled with the funds of such commission merchant nor".

4. Page 11, line 1, after the comma following the word "however" strike the rest of the paragraph to and including line 11 and insert in lieu thereof the following:

"That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing-house organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market or with any member of such contract market, may be withdrawn and applied

to such purposes including the payment of commission, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with such contracts and trades."

This change, with those suggested in paragraph 3, will more definitely require commission firms handling orders for customers to segregate and deal separately with margin moneys and funds belonging to customers as distinguished from funds belonging to and used by such firms in their own business, and thus will provide a more adequate safeguard against the misuse of funds belonging to customers. The commission firms, of course, must be free to commingle the moneys of different customers and to use such moneys for the purpose of margining or settling the contracts and trades of customers according to present custom and usage, but should not be permitted to confuse such money with their own money or to use it in the conduct of their own private business.

5. Page 13, lines 6 and 7, strike the word "hereunder" and insert "thereunder."

6. Page 14, line 5, after the word "delivery", insert a comma.

7. Page 17, lines 9 and 10, after the numeral "(3)", strike "When so directed by the Secretary of Agriculture,".

8. Page 19, following subparagraph "(6)" of section 5a, add another subparagraph as follows:

"(7) Require that receipts issued under the United States Warehouse Act (U. S. C., title 7, secs. 241–273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

This additional provision is necessary to remove unfair discrimination against Federally licensed warehousemen who desire to make their receipts tenderable on futures contracts upon the same terms and conditions imposed on State licensed warehousemen. This requirement is in accord with the spirit and purpose of the present United States Warehouse Act.

9. Page 23, lines 9 to 23, inclusive, strike the entire subparagraph "(2)" and insert in lieu thereof the following:

"(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such cooperative association."

This change will clarify the intended purpose not to authorize the rebating of commissions by cooperative associations in violation of existing exchange rules although permitting federated cooperative associations to contract with and compensate constituent organizations for services rendered or to be rendered in connection with organization work, educational activities, or the procurement of patronage for the central operating unit.

Sincerely,

H. A. WALLACE.

STATEMENT OF C. B. STEWART, LINCOLN, NEBR., PRESIDENT OF THE FARMERS WEST CENTRAL GRAIN CO. OF OMAHA

Mr. STEWART. Mr. Chairman, my name is C. B. Stewart, of Lincoln, Nebr. I am president of the Farmers West Central Grain Co., of Omaha, and a member of the board of directors and directors for legislation of the Nebraska Farm Bureau Federation.

I am also a member of two local farmers' cooperative associations—the Farmers Union Cooperative Grain Association, of Red Cloud, and the Farmers Union Cooperative Grain Association, of Bennett, Nebr.

I am also an operator, in cooperation with my son, on the farm and produce grain and livestock for market.

I have not prepared a statement, Mr. Chairman, because I had anticipated that I could gather together the notes that I took from the statements of the opponents of this bill, and prepare them this evening in some logical order.

I do want to say that I am somewhat in a unique position in that I have had the privilege of appearing before a number of congressional committees in behalf of farm legislation and in opposition to some that I felt were detrimental to agricultural interests. But this is the first time that I have appeared before a committee in which everybody seemed to be for the bill, or for what the bill contained. But, strange to say, they want to rewrite it in their own language. They are all for it.

I dare say that if we would go back to the introduction of the first grain futures act, the record will reveal that that legislation had the opposition of exactly the same interests and the support of the same interests that this bill has. I never knew that I, as a producer, had so many friends looking after my interests.

Particularly do I want to refer to the discussion here of this section 4a, because the so-called opponents of the bill—who apparently are not opponents at all—devoted a great deal of time to it, and they set up in their own minds certain limitations for trading.

I want to call attention to, as they admit it, the fact that the bill specifically makes exception of legitimate hedging operations; and in no case does it set up an arbitrary limitation on speculative trading.

The suggestion of the opponents of this bill that such determination be left to the various committees or governing committees of the board of trade or the commodity exchange, would be much more advantageous and satisfactory to them, but it scarcely appeals to me.

The provision there is that the Commission or the Secretary of Agriculture shall determine, depending upon the conditions prevailing at certain times or under certain market periods, the necessity for any limitation.

Grain moves in large volumes at certain times. And the history over years of operation upon the various commodity grain exchanges reveals that men who study those conditions can affect the price of cash grain by their speculative operations at a time when the smaller country speculator is being depended upon to absorb the legitimate future sales of the cash grain handled.

I submit to this committee that in the exercise of the authority granted in section 4a, the Commission or the Secretary would most certainly be influenced by the judgment of the experienced men who, over a good many years, have administered the Grain Futures Act.

They do not benefit financially or in any private business way by the operation of any board of trade or grain exchange. Their income does not depend upon the volume of grain that flows through their office.

We are all human. I am not criticizing what is probably the majority of the Chicago Board of Trade. I understand the majority are commission men and brokerage men rather than cash-grain handlers on their own account. Probably I would take the same position they do if I were in that business.

But I submit to the committee that the welfare and the best interests of the public and the producer are safer in the hands of men who have devoted their lives to a study of the conditions that govern the prices of grain to the producer and of the finished product to the consumer—who do not have a financial interest, either in the volume or in the handling of that product.

What would they consider in determining a limitation? Those men know full well that any restriction, any unnecessary restriction, upon the processor in the conduct of his business would be reflected in the prices the producer receives or that the consumer pays. They are there in the interests of the general public and not of any one class.

Witnesses seem to be very much concerned that this Commission, or the Secretary of Agriculture, under this bill would be first given legislative power, then executive power, then judicial power—and yet they ask us, as producers, to submit to an organization that wants to make its own rules and that at its own sweet will can hale before its various tribunals the farmer cooperative, and act as prosecuting attorney and jury and judge when they had a financial interest in the decision that they are about to make.

All you have to do is go back to the *Farmers National case*, in which they were pitched out on their ear by the clearinghouse association; and $250,000 or more of our money as producers, cooperative producers, was paid into the treasury of the private competitors of the cooperative, who had a part in the establishing of the rule and acted as jury and judge in throwing us out without reasonable recourse. We were not permitted an attorney in ther and not even permitted a transcript of the evidence. And yet the witnesses opposed to the bill before you wanted to propose that in future determination by the Commission, the record to be submitted by whatever committee of the board of trade reviewed the case, should constitute the evidence. And the accused or guilty party, if they are guilty—or the accused party, I should say—has no chance of even making a record. That is the kind of impartiality that my good friends who are so much interested in my welfare as a farmer now propose as an amendment.

I wish to correct another impression that was sought to be left with the committee this morning by one of the witnesses. He emphasized the claim that the parent corporation—and reiterated that word "parent"—meaning Farmers National, had upon the earnings of subsidiary corporations.

I wish to submit that that parent—when you speak of the "parent" you have in mind the creative agency. Long before there was a Farmers National we had several thousand farmer-created cooperaive associations, and those in my State even had to go to the Supreme Court of the State to establish their rights to operate on a railroad right-of-way in the face of the opposition of the men who come in here before this committee and declare themselves to be such faithful friends of the producer and the cooperative Some of the very men, or the firms they represent, are parties to an injunction that is on record in our Supreme Court to correct some of the unfair and unethical practices by which they sought to defeat the effort of the farmers of my State to organize themselves and capitalize their own industry for the handling of their business that they organized 25 or 30 years ago, many of them; and the same organizations, recognizing the necessity of securing a proper representation upon the terminal markets for the handling of their goods, organized themselves into State and regional organizations and capitalized them with their own money, not Government money. That was before we ever had a Federal Farm Marketing Act. They had the same difficulty in securing the right to a free and open market that the local farmers had in establishing their local cooperatives in their local communities, and the records reveal that. It was said that they did not deny the right, that they accorded the right of the cooperatives to pay dividends out of earnings. The record shows that in no instance until we had developed to the extent where we were able to express ourselves, where public opinion and judicial decision finally sustained that use, that in no instance was a cooperative permitted to secure a single place upon a single commodity exchange unless they signed an agreement that they would not pay patronage dividends. It did not come graciously. We had to fight every step on our way to the cooperating marketing agreement.

The thing I want to bring out is that we have such organizations as the Farmers Union Jobbing Association of Kansas City, the Equity Union Grain Co. of Kansas City, the Farmers Union Terminal Association of St. Paul, Minn., the Central States of Indiana—and I could go on and name probably 25 or 30 of these so-called regional or State cooperative organizations—capitalized and financed by the farmers or their local associations for the handling of their goods, long before there ever came into existence, the Farmers National Grain Corporation; and that these States and regional organizations, recognizing the necessity of controlling in a businesslike way the grain marketing, the marketing of the farmers' grain, did get together when the opportuniy offered and created the Farmers National Grain Corporation. The Farmers National is the child, and not the parent, of these cooperative organizations that were in existence long before there ever was a Farmers National Grain Corporation. They own all of its stock. The Farmers National Grain Corporation owns no stock in any of these regional or State rganizations. The regional and State organizations own all the stock of the Farmers National.

I want to submit this, that the Farmers National could be liquidated today and the majority of these State organizations, regional organizations, would continue to function and operate as a marketing agency. The liquidation of one or more of these regional organizations might take place and the Farmers National could continue. They are separate corporations, organized with charters of their own, and they are entitled to such earnings as they may secure for services rendered on commodities handled or commodities distributed. These regional organizations, many of them, have an income aside from Farmers National for services to their membership or for commodities handled; and I submit to this committee that I do not concede, regardless of what others may do—this is my own per-

sonal opinion—that the Chicago Board of Trade has any right to say what my organization of Omaha, Nebr., shall do with the legitimate earnings of that corporation.

The earnings of any corporation belong to the stockholders thereof. They certainly have a right to determine how they can distribute those earnings. Our Farmers West Central, a regional cooperative, is not a member of the Chicago Board of Trade. We are members in good standing of the Omaha Grain Exchange, a cash grain market. Our regional is known as Farmers West Central and is a substantial stockholder in Farmers National Grain Corporation.

I submit to this committee that it is an unfair situation that out of payments for services definitely agreed upon and definitely rendered by our regional, and which if they were not rendered by our regional cooperative would need to be performed by the Farmers National Grain Corporation at an equal expense—that if we by good business methods and economical handling of our business are able to add to our income by savings therefrom, we have a right to dispose of those savings in any way we see fit, and it is not a violation of the rule against rebates. Why, they said that the payment of a legitimate patronage dividend was a rebate until the courts and the Congress of the United States legalized the cooperatives in the Volstead Act. They would have you believe now that they are seeking to protect those rights, to safeguard them. They have always been the friends of the cooperatives and of the patronage dividend proposition.

Senator SHIPSTEAD. What other rebates are paid than patronage dividends?

Mr. STEWART. We do not pay any other rebates than patronage, Senator.

Senator SHIPSTEAD. That is the only one?

Mr. STEWART. That is what they say is a rebate. My organization has a definite earning capacity. We perform a definite contractual service that would have to be done by somebody, just as a private grain dealer has his contracts with the country to originate business, and he pays for it. He may have a broker out here, and he pays that man a brokerage for originating grain, but he doesn't attempt to say how he shall spend his income. If he is a member of the Grain Exchange of Omaha, he splits his commission and it may be divided. A local association out there in Nebraska holding a membership in the Omaha Grain Exchange may consign grain to the Bartlett-Frazier Grain Co., and it is entitled to and will receive a split commission, which it puts into its treasury and which it passes out as its patronage dividend. But they say if our regional cooperative makes a saving, it is not entitled to it; that is a rebate. They also have fought the "rebate" principle or the patronage dividend principle.

Senator SHIPSTEAD. Are these rebates distributed equally to all who are entitled to a rebate?

Mr. STEWART. Yes, sir.

Senator SHIPSTEAD. There is no discrimination? Some do not get more than others?

Mr. STEWART. No, sir. We in practice since we have been organized have not rebated any of that earning in the term as they complain; we have used it to pay dividends on our stock.

Senator SHIPSTEAD. But now it is patronage?

Mr. STEWART. Not necessarily. We first will pay dividends upon our stock, as the law allows, up to 8 percent limit. We pay 6 percent.

Senator SHIPSTEAD. Do you pay any patronage dividends to nonmembers who patronize your company?

Mr. STEWART. My organization does no business except with members. We have that limitation in our bylaws, that we shall do business only with our members. Of course, they are entitled to patronage dividend if we earn it.

Senator SHIPSTEAD. Have you abolished the stock dividend?

Mr. STEWART. Oh, no; we pay a stock dividend first, and not to exceed 8 percent. Our practice has been to pay 6 percent.

Senator NORRIS. Senator, I think, as I remember the law, they can organize this association; they have stock that they issue.

Senator SHIPSTEAD. And limited dividends?

Senator NORRIS. Limited dividends. And they operate on the money that they get for the stock that is sold, and they pay first a limited dividend to the stockholder and the balance is divided among the members of the association.

Senator MURPHY. As patronage dividends.

Senator SHIPSTEAD. According to the amount sold?

Senator NORRIS. Yes; according to the amount sold.

Mr. STEWART. I will say, as a practical operation the local cooperatives, for instance, the local organization I belong to at Bennett, Neb., sets up on its books the dividend that would accrue on a nonmember's grain until it will pay for a share of stock, which is recognized as a perfectly legitimate way of increasing our membership.

Senator NORRIS. That is provided for by law?

Mr. STEWART. Yes; that is provided for by law. We do not issue patronage dividends only to those who are eligible to become members, and our eligibility is limited to producers of agricultural products.

Senator MURPHY. You don't directly pay a patronage dividend to the nonmember whose business you handle, but you don't handle any nonmember business?

Mr. STEWART. We might if they were eligible, but our business is solely—it is a cooperative association.

Senator MURPHY. But other associations handling the business of nonmembers would set up a credit on the books on the basis of his transactions?

Mr. STEWART. Senator, I should qualify my statement. I made it rather hastily. We do not pay patronage dividends, only to members or those eligible to become members, which the Capper-Volstead Act limits to producers of grain, and we set up the patronage dividend to a nonmember association that is eligible, with whom we do business—that is eligible to receive such patronage dividends.

Senator MURPHY. It stands as a credit to the eligible member?

Mr. STEWART. A credit on the share of stock.

Senator SHIPSTEAD. Have you seen the letter of the Secretary of Agriculture proposing an amendment?

Mr. STEWART. No; I have not.

Senator SHIPSTEAD. As I understand it, it limits the dividends and patronage dividends that can be paid on capital stock, and patronage dividends to members or nonmembers. Is that all right, in your opinion?

Mr. STEWART. My understanding of the discussion this morning, Senator, was that it went further than that. If I am in error, I hope I will be corrected. It recognizes the right to pay dividends to members, both stock and patronage dividends, but denies the right to the State regional, such an organization as mine, of paying any dividend by the regional, either stock or patronage, the origin of which might come from a payment for services rendered by our regional to the Farmers National Grain Corporation.

Senator SHIPSTEAD. Wouldn't that be accounted a necessary expense? Wouldn't that be accounted an expense instead of a dividend?

Mr. STEWART. No. We might do the work efficiently and be able to save a part of that. The point I am making is that we are entirely a separate corporation, just as separate so far as our corporate structure is concerned, as the Bartlett-Frazier Grain Co. is from the Farmers National.

Senator SHIPSTEAD. Do you think this is directed specifically against the Farmers National?

Mr. STEWART. Well, it affects them. It may affect others, but it affects our regional's ability to secure an earning as a stockholder of the Farmers National for a service actually rendered, which the Farmers National would have to perform if we did not perform it, as every other grain company has to so do. Private grain firms have to keep a field force out. Our regional is the field force in Nebraska for Farmers National Grain Corporation.

Senator SHIPSTEAD. Would you call it a dividend or a payment for services?

Mr. STEWART. That is a payment for field service on the part of the Farmers National to my regional organization. It is regional property then. Why should the Chicago Board of Trade attempt to control what a regional organization may do with its earnings? I am not a member of the Chicago Board of Trade. Farmers West Central is not a member. We are members of the Omaha Grain Exchange. You don't hear the Omaha Grain Exchange objecting to anything. Our relations are very happy, fortunately, out there.

Senator SHIPSTEAD. I am just asking for information. As I understand it, the cooperative can't pay to any member any dividend or property except a dividend of stock or a patronage dividend?

Mr. STEWART. That is correct.

Senator SHIPSTEAD. If there are any other funds, why should that necessarily be a dividend? Why couldn't you say that this is considered legitimate expense, and pay it as part of the expenses?

Mr. STEWART. I don't quite get you.

Senator SHIPSTEAD. If you want to pay it in any other way than as a dividend on stock?

Mr. STEWART. To a member of our organization?

Senator SHIPSTEAD. Yes. If you pay it for services, it would not be a dividend, would it? Wouldn't it be an item of necessary expense that would have to be paid before you pay any dividend?

Mr. STEWART. It might be an item of expense, but it violates the principle of cooperative bargaining. We might pay one or two who performed a special service, and they might not be the one who delivered the greatest volume of grain.

Senator SHIPSTEAD. But they would get the greatest patronage dividends?

Mr. STEWART. But we are not supposed to pay a patronage dividend. Under your hypothesis we are supposed to pay it for services on, we will say, a budget. The point I am making is that here are two separate corporations. If my organization were operating an elevator in Nebraska with the members of the Omaha Grain Exchange, and we were to consign grain to the Butler-Welch Grain Co., we will say, we would be entitled to a split of the brokerage, the commission which would go into our general treasury, would be an earning of the corporation, and we might pay it out as a patronage dividend. The same thing holds true of the Farmers National.

Senator NORRIS. I would like to suggest, just as a matter of economy of time, that the discussion of any of these proposed amendments on the part of the witnesses be deferred until tomorrow, when they can examine the amendments. Mr. Stewart has said he has not examined the amendments, and we will probably have to go over it again after they do examine them, and why not defer that discussion until they have had an opportunity to look them over and see whether they favor them or are opposed to them?

Senator SHIPSTEAD. I think that is all right.

Senator MURPHY. It is all a question of conserving time, Senator.

Senator NORRIS. Yes, that is the only point.

Mr. STEWART. I will just conclude my statement then by saying this, that the supporters of the bill who appeared against it during the last few days were absolutely opposed to any regulation, in the hearings before the House; now they come and say they are for the bill and the things that are in the bill, and propose to rewrite all but the title.

Senator SHIPSTEAD. Mr. Stewart, if I am not mistaken, the statement was made this morning that these cooperatives had paid dividends out of borrowed capital. So you think that is true?

Mr. STEWART. No, sir.

Senator SHIPSTEAD. It was so stated.

Mr. STEWART. I do not think that is true. So long as we are in a solvent condition and are meeting our obligations—I might receive a payment from a private grain company, a brokerage for grain delivered, yet that private grain company might lose a lot of money during the year. They have provided resources and reserves and surpluses. So long as the company is in a solvent condition and is meeting its obligations I do not think you could say that it was paying out of borrowed capital, because every grain company borrows a great deal of capital. I don't believe there is any exception to that.

Senator HATCH. The statement was made, as I recall, that the Farmers National did make a payment to its regional corporations when the Farmers National itself showed a loss. Wasn't that the statement?

Senator NORRIS. Yes.

Mr. STEWART. That is correct; yes, sir.

Senator HATCH. That was correct?

Mr. STEWART. Yes, sir. But it did not impair our capital. We had met our obligations. During the years when we were fortunate

in our operations we hade made up some reserves and surpluses, like every good business concern does, against such a contingency. They did not pay a dividend; they paid for a definite service rendered under a contract. It was not a dividend. It was never considered a dividend by the cooperatives. Had the Farmers National made a profit sufficient to justify it last year or the year in question, they would have probably declared a dividend in addition to the payment for the service rendered to Farmers National Grain Corporation by the regional organization. It is a part of the operating expense, Senator, that any company has paid from one corporation to another under a contract for a definite service.

Senator SHIPSTEAD. It was not considered as a profit?

Mr. STEWART. Not by the Farmers National, but the corporation to which it made the payment, by a good business method and economy in operation was able to save some of that payment from Farmers National Grain Corporation and gave the benefit of it to the farmer-producer members of the organization, which these men say they are so much interested in improving their condition.

I thank you, gentlemen.

Mr. GOLDSMITH. Mr. Chairman, before introducing the next witness, and to expedite the hearing and make it unnecessary for Mr. Stewart to be recalled, I have ready the amendment and I think I can tell Senator Shipstead very briefly what the provisions were in the original act and what they are now.

The Farmers National regional stockholders do the field-educational work and solicitation of business for Farmers National Grain Corporation. The Farmers National has paid them for doing that work. Based on the amount of grain delivered from a particular area, the regional might or might not affect a saving to the farmer.

Mr. STEWART. Not from the grain delivered from that area, but from grain delivered from their members.

Mr. GOLDSMITH. From the members in that area, though I don't think that is important for this discussion. If the regional makes a saving and then shows a profit from all of its operations for a particular year, it would be free to pay a limited dividend on the stock equal to 8 percent and patronage dividends to its members. The contention was made by the Chicago Board of Trade immediately after the Congress adjourned last year without passing the Jones bill, that that involved rebating and therefore violated the rules and the law, because their theory was that a patronage dividend could only be paid when, if, and as the Farmers National Grain Corporation, which does all the marketing for the regional cooperatives, had profits for a particular fiscal period, and even so the regional, which was a stockholder, had a profit, and could not distribute it. Now, after sundry negotiations with the board of trade, in which we insisted that we press before the Grain Futures Commission charges which would have suspended them for 60 days, and discussion with Mr. Thomas, then Solicitor of the Department of Agriculture, now judge of the circuit court of appeals, a compromise was finally reached in which we dropped those proceedings and they dropped certain rebate charges, provided we enter into an agreement not to permit our regionals to use their savings for that purpose, but

without any restriction on our right to ask Congress to legislate and make clear our rights.

The original bill, the second in the House, not the first bill, because this all happened after the first bill had died, after Congress recessed the first time—the second bill contained the provision which was sponsored by the Farmers National and particularly by some of the regionals, which is presently found in section 62a, and on which you have heard the testimony of board of trade representatives. The Secretary of Agriculture—and we think he is wrong—agreed that the regional ought not to be permitted to make that kind of a distribution. As I stated in my opening statement, so that the points of the bill can go down the line and there won't be any question of its dying in this session of Congress because of disagreement among the proponents, the farm groups have agreed to take the Secretary's language which was suggested on page 2 of his letter, and the farm groups are also willing, although they don't think it necessary, to add the words "Federal cooperative" in line 2, which Mr. Ellis suggested this morning.

Senator SHIPSTEAD. Has that been explained to the committee?

Mr. GOLDSMITH. This has not been explained; no. Mr. Ellis stated this morning that the language suggested by the Secretary would be entirely satisfactory if the word "federated" were added, to make it clear that the reference was to relate back to the federated cooperative with the Farmers National, so that the provision as now drawn would not permit our regional to pay patronage dividend or dividends on stock out of solicitation funds which they received from Farmers National for their services. In other words, that the cooperatives and the farm groups are making that concession in the interest of having a bill that all the proponents can agree on. The only difference between the cooperatives and the Secretary of Agriculture was on this one particular provision, to wit: May the regional, a separate corporation, pay a patronage dividend on its stock when it has a profit, even though Farmers National Marketing Agency has no profit? We said it should be able to do it. The Secretary said "No."

Senator SHIPSTEAD. What was the objection?

Mr. GOLDSMITH. The objection is that that is rebating, and the argument is that it is rebating because of the fact that the marketing organization has no profit.

Senator SHIPSTEAD. Rebating from whom?

Mr. GOLDSMITH. The argument is that you must look through these separate corporations, Senator—I want to say the argument on their side is fairly plausible—you must look through these separate corporations and say that they together with Farmers National are simply providing a single service and therefore, unless Farmers National has a profit it has no right to make any money available to them on a commodity unit basis which can be used to pay a patronage dividend. We have argued that matter with the Secretary of Agriculture and the Grain Futures Administration. We have not been able to convice them and because of that fact, and rather than have the bill disseminated or possibly discussed for months and years, the farm people have reluctantly taken the position that they will go

along with the bill, plus the Secretary's suggestions for an amendment.

Senator SHIPSTEAD. If the regional has money in the treasury and they don't need to put up operating expenses, what will they do? I don't understand this.

Mr. GOLDSMITH. Under the budget agreement, Senator, that we made with the board of trade, the compromise agreement I told you about, when the rebate charges were pending against us and we had charges against them, we agreed that the regional would return to the Farmers National any unexpended funds. If it didn't use all the money it got to do its field and educational work, it would have to turn it back. Under the provision recommended by the Secretary of Agriculture the regional could use that money to simply add to its capital account. Under our proposal in the original bill the regional could use the money if it had a profit, either to pay dividends on stock or a patronage dividend.

Senator SHIPSTEAD. On page 3 of the Secretary's letter, the last amendment proposed there—that is what I started to inquire about, where it says:

> No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation or a commodity unit basis, or otherwise—

And so forth.

Mr. GOLDSMITH. Yes. That now as the Secretary has drawn it provides that we may compensate our regional for their field work, for newspapers, or pay for meetings or what not. If they have any savings they can put that in their capital account, they can capitalize it, but the way it is now drawn they must not use that money to pay a dividend on the stock or pay patronage dividends.

Senator SHIPSTEAD. Is that satisfactory to the cooperatives?

Mr. GOLDSMITH. We are reluctant to accept it, but we do accept it because, in all other provisions with the Department of Agriculture and other officials of the Government, the cooperatives and the farmers are thinking alike, and we much prefer to have a bill, even though it is not 100 percent satisfactory, than have no bill at all, because with all the members that we have, if we were all thrown off the Chicago Board of Trade and Congress adjourned without passing the bill we could do nothing.

Senator SHIPSTEAD. I do not want to take up the time of the committee further.

Mr. STEWART. I just want to say this for the regional. We may be forced to acquiesce in order to get some of the things we think are necessary to protect the producer. For the benefit of the producer we may have to acquiesce, but we do not endorse—speaking for my own organization, not for others—we think it is unfairly discriminatory against our organization, against legitimate earnings, but we may have to assent to it rather than lose all of the beneficial legislation embodied in the bill, and we are willing to make that sacrifice, but we are not happy about it.

Senator MURPHY. We went into all that this morning.

Mr. GOLDSMITH. There is one further question I have not answered. That is, do we pay the dividends out of money we borrowed from the Government? The answer is that the Farmers National at the end of the last fiscal year, in a balance sheet certified by public accountants and accepted by the Farm Credit Administration, showed a capital of between a million and a million and a half dollars and a surplus account. That was the result of earnings, substantial earnings during the past years. Obviously, no corporation is paying a dividend of any kind out of Government money when it has a capital and surplus account and pays from the accumulated outside earnings.

Senator HATCH. Mr. Chairman, I don't want to reiterate, but I do want to get clear in my own mind the amendment that was suggested by the Secretary and contained in the letter, which I have not read yet. Under that amendment the regional will still not be able to pay out to its members unless the Farmers National shows a profit?

Mr. GOLDSMITH. Yes, sir; that is right. In other words, his amendment is a limitation on what we desire, an important limitation, that no patronage dividends nor dividends on capital stock can be paid, we suggested to the Secretary that even though patronage dividends could not be justified, certain dividends on capital stock could be justified, because, as Senator Norris mentioned, stock issued by cooperatives is simply a way of raising working capital, like income debentures, and that that is a cost of operation of the cooperative in rendering the service.

Senator SHIPSTEAD. Is the Farmers National an agency of the regional?

Mr. GOLDSMITH. Yes, sir.

Senator SHIPSTEAD. Owned by the regional?

Mr. GOLDSMITH. Owned by the regional.

Senator SHIPSTEAD. What would they do with their profits? Why should they have to have a profit unless they render services and make their expenses? Why should they have a profit? They belong to the regional.

Mr. GOLDSMITH. The regional owns the stock, Senator, and they receive the profit of the Farmers National first by way of limited dividends on stock, and second, on the basis of their patronage.

Senator SHIPSTEAD. Then the dividends are paid out of the earnings to the regional?

Mr. GOLDSMITH. That is right.

Mr. Chairman, I now find that the representatives of the three large national farm organizations are present, the Farm Bureau, the Grange, and the Farmers Union, and it gives me great pleasure to present as our next witness Mr. E. A. O'Neal, of the American Farm Bureau Federation.

STATEMENT OF EDW. A. O'NEAL, CHICAGO, ILL., PRESIDENT, AMERICAN FARM BUREAU FEDERATION

Mr. O'NEAL. Mr. Chairman and members of the committee, it is not an unusual activity for the American Farm Bureau Federation to again be offering testimony in favor of amending the Grain Futures Act. In 1922, or thereabouts, when the original Grain Futures Act was enacted, the federation actively supported the legislation. In all the years since representatives of the federation and the membership of the Farm Bureau in all parts of the Nation, particularly those areas where certain of our large crops are produced, have recog-

nized the inability of Grain Futures Administration properly to cope with the difficulties of administration of the act.

Too much was left undone in the original act; the regulatory and supervisory influences in the original Grain Futures Act have been demonstrated as not being full and complete enough to accomplish the original objectives, which were largely to prevent and to remove obstructions and burdens upon interstate commerce in certain commodities by the method of regulating, limiting, and supervising speculative transactions.

Only a few years after the original act was placed on the statute books the Washington offices of the American Farm Bureau Federation received from the Illinois Agricultural Association, the Farm Bureau in Illinois, a memorandum outlining about 15 points which needed either clarification or strengthening in the original act. The recommendations in this memorandum were prepared in bill form, were introduced in the House and in the Senate, and with modifications in every subsequent session of Congress have been before the committees of Congress in one form or another.

H. R. 6772, which passed the House of Representatives last year and has already been reported favorably by this committee, contains practically all the objectives which more than 12 years ago the Farm Bureau Federation set out to secure to strengthen the Grain Futures Act.

It is a peculiar situation which faces us this week in regard to the pending measure. Somewhat posthumously, may I state it, we are having hearings on a measure which is already on the calendar of the Senate and which has been testified about so voluminously in the last 10 or 15 years that it seems somewhat ridiculous to have these belated hearings when the bill is practically ready to be voted on, on the floor of the Senate. We have heard in the last day or two the same arguments from our friends of the Chicago Board of Trade which we have heard before this committee and the Agricultural Committee of the House repeatedly for more than 10 years.

Those of us who speak for the farm groups do not think it necessary to offer labored arguments why this type of legislation is necessary and why it is equally necessary to strengthen the Grain Futures Act in several ways; but please note what President Roosevelt stated on February 9, 1934, in his message to Congress on a bill of exactly similar nature, which was then pending and which is now law, the Federal Securities Act. The President stated—

> It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life. Nevertheless it should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations.

Somewhat later—that is, on March 26, 1934—President Roosevelt, in writing to Congressman Rayburn, chairman of the House Committee on Interstate and Foreign Commerce, in regard to the proposal of controlling stock exchanges, said:

> I have been definitely committed to definite regulation of exchanges which deal in securities and commodities.

There is a direct connection in principle between regulation of exchanges which deal in stocks and bonds and those exchanges which deal in agricultural commodities. If speculation running riot in the first is bad, as the President stated it to be bad, and as Congress

agreed in the enactment of the Federal Securities Act, then likewise it is bad to have uncontrolled speculation in agricultural commodities, which in millions of dollars, actually equal or surpass the values of securities bought and sold on the stock exchanges.

Farm organizations have fought for 25 years for more definite control and regulation of commodity exchanges. We see now the peculiar situation of a Federal law to regulate the stock exchanges having been enacted in a very brief period from the time the idea was first initiated, mostly by President Roosevelt, to its enactment; but in the meantime we are still struggling, and our friends from the Chicago Board of Trade are still opposing in one way or another, a similar step forward in regard to speculation on the commodity exchanges.

Please notice also some comments in Report 421 of the House Committee on Agriculture, when that committee acted favorably upon the above bill in 1935, similar comments being contained also in the Senate report on the same measure. The House report says:

> The theory underlying the Grain Futures Act of 1932 was that the grain exchanges would regulate themselves with Government assistance and that failing in this respect contract market designation would be withdrawn and future trading would be stopped. The record of the hearings preceding the enactment of the Grain Futures Act clearly indicates that such act was intended to serve as a preliminary measure to give the exchanges a chance to demonstrate their ability at self-government and self-regulation and to provide experience and knowledge necessary for more specific control over exchange practices. Since 1925 every Secretary of Agriculture (and may I add in passing, all farm organizations) has recommended that the act be strengthened. This bill, therefore, merely does that which, based upon experience in administering the present law, should have been done long ago.

This extract from the House report on the commodity exchange bill shows definitely that the original Grain Futures Act was not intended to be an all-inclusive and final statute, but was the beginning of a supervisory and regulatory activity in regard to speculation in farm commodities, which beginning would need to be followed up with subsequent and strengthening legislation.

Now, we see those who have testified before this committee for 2 days, stating that their business-policy committee should practically be the administrative agency to decide what should and should not be done in regard to grain trading. May I state that the experiences of N. R. A. seem to be a rather conclusive evidence that self-regulation of industry is, as the name implies, too selfish to be considered as protective of the general welfare. The Supreme Court in its own language, says so, and in so saying condemns the code of the grain exchanges which was based on self-government, as well as the other instruments similarly prepared by various industries.

I do not think it necessary to go any further in commenting about turning over the administration of the Grain Futures Act, or of any other Federal act, to an exclusive group which ought to be regulated, rather than to be constituted as the regulating agency. This is true whether or not the business-policy committee of the Chicago Board of Trade is enlarged by the inclusion of representatives of producing and cooperative groups.

The Government is an impartial agency and is expected to be able to maintain a judicial approach and attitude to the questions of

public policy, general welfare, and similar features which a self-interested individual or group cannot possibly maintain. In the pending act we expect to continue the commission which, in a broad policy-making way, determines the principles to be followed in the enforcement of the original Grain Futures Act and of the pending amendment. That commission consists of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General. Naturally the direct administration of the act, under the guidance of the commission, is lodged in the Department of Agriculture and particularly in Grain Futures Administration.

The helpfulness of this type of legislation has been so abundantly demonstrated in the last 15 years, despite its imperfections, that now we desire to add to grains, which were the exclusive commodity contained in the original Grain Futures Act, so as to include the following farm commodities: Wheat, cotton, rice, corn, oats, barley, flaxseed, grain sorghums, mill feeds, butter, and eggs. Futures are bought and sold on the commodity exchanges where these farm products are merchandised, and the bill is intended to apply only to the commodities upon which futures are bought and sold. The bill is not one which our friends on the board of trade describe it as being, namely, an antifutures measure. Instead of being antifutures, it is definitely profutures, and distinct language is contained in the measure to guarantee this in section 4a (3), as follows:

> For the purpose of this paragraph bona-fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity or conversely purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such purchases are offset by sales of the same cash commodity.

This is a definite guaranty and protection that the use of futures, if balanced properly with transactions in actual commodities, is not to be destroyed and prohibited by the measure, but is to be perpetuated. In other words, futures are continued as a sort of insurance rather than as a device for speculation. If a man sells a thousand bushels of wheat, or a thousand bales of cotton, under the terms of this bill he will be permitted, and even encouraged, to buy an equal amount of futures on those commodities; and should he buy a thousand bushels of wheat, or a thousand bales of cotton, futures of an equal amount may be sold by him. In other words, transactions in the actual commodity are, in a way of speaking, insured by futures transactions; but right here is where one of the prominent features of the pending legislation contained in the original Grain Futures Act comes in. This bill authorizes the Secretary of Agriculture to set limits which can be varied from time to time, following a definite procedure which is outlined in the measure, upon how much one operator may hold in any future at any one specified time. In other words, right there comes in one of the most important parts of the measure, namely, the reasonable limitation of the use of futures which too often are used far beyond their insurance characteristics, of which I have just spoken, and become purely speculative transactions.

It may be submitted that it is not necessary on the grain markets, for instance, to buy or sell 9 or 10 times as many futures as are handled in actual grain in order to have the insurance of sale against purchases and of purchases against sale, which futures are thought to secure. It is nothing unusual for future transactions, literally, if I may use my former expression, to run riot on the commodity exchanges, not alone those which handle grain, but those which deal in the other commodities which this bill now contains. I believe it has already been offered as testimony here by those who oppose this bill that futures on wheat in the Kansas City market last year reached an amount which slightly exceeded the entire number of bushels of actual wheat produced in our entire Nation. This sort of development stretches the insurance features of future trading so far that it breaks; in fact, there are many farmers who honestly believe that any extent of future trading is wicked; that is, is speculative and destructive of the stability of market prices, which always is the goal sought to be reached by farmers in selling their actual farm comomdities.

There are some features in this measure which are of special importance owing to the history of the administration of the original Grain Futures Act for nearly 15 years. I refer to cooperative organizations.

When the original act was adopted little, if anything, was contained therein which recognized the rights of cooperatives to be members on boards of trade and similar institutions which deal in grains and in futures thereon. In fact, about the same year that we saw the Grain Futures Act first enacted we also saw the Capper-Volstead Cooperative Marketing Act placed in the Federal statutes. It was too early at that time to round out the cooperative plan of action by demanding and securing recognition for cooperatives, which in recent years we have partly recognized and have partly secured. We have found in the intervening 15 years that cooperatives have had a dreadful time; first, to be accepted as members of boards of trade; and second, to receive all the benefits of members in clearing-house associations and otherwise which the well-established members on such boards of trade received as matters of course. Instances could be given where cooperatives were compelled to surrender one or more of the distinct cooperative features designed for them and guaranteed to them in the Capper-Volstead Act. One of the most prominent of these cooperative features is that of patronage dividends.

Back yonder, 15 years ago, we heard it proclaimed from the board-of-trade housetops, from the old line commission companies, and from other sources that patronage dividends were rebates. Nevertheless, Congres went ahead and adopted a national policy which every Congress since has sustained, and which every President at the time of and since the enactment of the Capper-Volstead law has sustained; saying nothing of farm organizations and of the general public, which latter is now so affirmative in its support of cooperative principles that town people are beginning to put into practice cooperative activities for themselves. Patronage dividends are nothing more nor less than a division of profits annually or semiannually among all the members and patrons, rather than, as under the corporate plan, a division of profits to those who own the enterprise.

Now come the witnesses of the last 2 or 3 days with the repeated statement that the pending bill, in some way or another, grants

rebates to farmers through their cooperative organizations which might be members of one or another commodity exchange. This argument seems to me to have been one so threadbare and to have been knocked out and taken the count of 10, if I may change my figure of speech, so often, by court opinion and otherwise, that we do not need to pay even passing attention to it at this late date. I am sure the members of this committee agree with the spokesmen of every farm organization that the patronage-dividend feature or any other legal aspect of cooperatives will not be sacrificed by any rewriting of the present measure, but will be sustained by the enactment of the measure.

Cooperatives have grown since the Grain Futures Act and the Capper-Volstead Act were enacted about 1922. Now we have great cooperatives, not in grain alone but in cotton, butter, poultry products, and other farm products, which have member and regional organizations affiliated with the central organization which might be a member of one or another commodity exchange. We will not permit, if it is within our power to prevent it, legislation being enacted which will destroy the make-up and the manner of operation of our great cooperatives, which are firmly based on Federal and State laws and have been established by their very successes as equal to in most regards, and far superior in some features, to the old-line corporate method of doing business.

The Secretary of Agriculture, under the terms of the pending bill, would be authorized, among other duties, to fix limits, as I have above noted, on long and short positions of any one operator in any one commodity at any one time; to place prohibition on such technical activities as wash sales, cross trades, privileges; to prohibit as an unlawful act false reports or statements, cheating, or defrauding customers; to register all futures commission merchants and all floor brokers; to suspend and, under certain circumstances, subject to review, to expel from membership on commodity exchanges individuals, employees, and corporations; to have access to the books and records of members of contract markets, and to require that such books and records be kept in the form and manner specified by the Secretary; to issue, under the authority of the Commission, cease and desist orders; and to impose penalties.

There are some provisions in the pending measure, beginning on page 27, which relate particularly to cotton. It is very gratifying that the pending bill has been made so inclusive in its list of commodities subject to supervision and regulation in regard to speculation therein by the Secretary of Agriculture and by the Commission. Although most of our argument, by very force of habit, revolves around grain transactions, we must not forget that the need of this type of legislation for cotton, butter, eggs, and the other commodities named, upon which futures are bought and sold, is just as great as it is now or ever has been for wheat. Practically every statement which is made in regard to wheat trading, in principle at least, can be applied to trading in the other commodities named in the bill.

Accordingly, since the language beginning on page 27 which relates to cotton attempts to give special treatment separate and apart for cotton than that accorded to the other commodities, and in the belief that such separate treatment is not necessary, all of that language should be deleted either by the committee or by amendment on

the floor of the Senate. It is our belief in the Farm Bureau Federation that whatever legislation relative to cotton trading and cotton futures is necessary should be incorporated in the same measure which deals with trading and futures for the other commodities. It is also our belief that such legislation as may be necessary for cotton of special nature should be contained in a separate measure. We shall be glad to discuss before this committee, at the convenience of its chairman, at any time the various aspects of legislation for cotton which is separate and apart from trading on the exchanges in the commodity or in the futures on cotton.

Obviously, one like myself, who states definite convictions as I have done today before this committee, has a background for so doing. That background is contained in a series of resolutions adopted year after year, with few years omitted, during the last 15, in which our membership in the farm bureau has requested and demanded that legislation of the type contained in H. R. 6772 be enacted.

Accordingly I recommend to the committee and urge the Senate to take up for consideration without any further delay this measure, and to enact it with all the commodities which I have named retained and with the special provisions relative to cotton deleted.

Senator SHIPSTEAD. These cooperatives, as a rule, are limited in the amount of stock each member can hold, are they not?

Mr. O'NEAL. Senator, the farm bureau is a general organization. We have our separate State unity, represented by Mr. Stewart, from Nebraska, and then the Illinois group, the Iowa group, and so on. They set up and operate these cooperative regional organizations, grain cooperatives, and so on. I think, as far as I know, that they follow precisely the Capper-Volstead Act in their operations.

Senator SHIPSTEAD. They are limited in the amount of stock each member can hold?

Mr. O'NEAL. They are limited in the amount of stock that each regional holds. The stockholders, as Mr. Stewart said, are the regionals. The regional holds the stock in the central organization.

Mr. GOLDSMITH. I think, Senator, Mr. O'Neal may have misunderstood that question. There is no limit in the Capper-Volstead Act on the amount of stock that the regional may hold. The limitation is on the return on the stock, so that, regardless of the stock holding, you cannot get more than interest on your money.

Senator SHIPSTEAD. The purpose was to limit the amount of return to the member?

Mr. GOLDSMITH. That is right.

Senator SHIPSTEAD. On his money invested. Wasn't that done for the purpose of having the profits, if there were any, distributed to the producers as patronage dividends?

Mr. GOLDSMITH. Yes.

Senator SHIPSTEAD. So that one is as much of a dividend out of profits as the other. I don't see how either one can be called a rebate if it is paid out of profits.

Mr. GOLDSMITH. No; it is not.

Senator NORRIS. Mr. O'Neal, I want to ask you about cotton. You lived right in the cotton belt and I think your testimony will be very valuable on that subject. There is quite a dispute among Senators about leaving cotton in this bill. As this committee reported the bill it struck cotton out. There are a great many of the senators,

however, who are bitterly opposed to striking it out, as I understand it. You have already expressed your opinion but I would like to have you tell us more fully why, particularly for the record, you are opposed and your organization is opposed to striking cotton out of the bill?

Mr. O'NEAL. Senator, cotton is no different from wheat—the handling of cotton is no different from wheat. Cotton mills buy their supplies and hedge just like the miller does. We feel that fundamentally the cotton farmers should be protected in the public exchange of cotton, just as much as the wheat farmer is. He has just as great a need of it.

Senator NORRIS. The chairman of the committee, Mr. Smith, who is absent from the city, as I understand it, wants to take cotton out. Am I right about that?

Senator SHIPSTEAD. I think so.

Mr. J. H. GILBERT. May I correct his error, Senator? I have been in attendance during the hearings on the cotton situation.

Senator NORRIS. I like to be corrected.

Mr. GILBERT. I think I have a record for attendance at hearings on the subject of cotton. In 1928 I acted as counsel in the controversy relating to cotton, which was ventilated before the Senate committee, and Senator Frazier can support me in the statement that it was the most illuminating and revealing investigation that was ever presented to Congress on cotton-futures exchanges.

The measure that is now before you had cotton put in it without much evidence as to the problems of cotton and cotton-futures exchanges being presented to the House committee in the hearings held before the present bill was reported. When this measure appeared before the Senate committee for action it had as its chairman, Senator Smith of South Carolina, who undoubtedly is the greatest authority on cotton in Congress, and the committee very properly deleted the word "cotton" and then tacked it on on page 27 and following, because there is little relation in several important aspects between cotton and the other commodities referred to in the bill, as I shall attempt to point out to you, and then as part of the United States Cotton Futures Act the committee inserted several amendments as amendments to the Cotton Futures Act.

While this measure was pending there was the break of March 11, 1935, on the New York Cotton Futures Exchange. Several resolutions were introduced to investigate the situation, and an appropriation of $75,000 was made by the Senate to conduct the investigation, and under those resolutions an investigation has been had, attended, I think, by every Senator who sits here, with the possible exception of Senator Shipstead. We have had revolting revelations in connection with cotton, monopolistic control by three or four interests in the cotton industry without a parallel in the history of any other commodity.

Now, what this committee did was to tack on several amendments to the bill. There is no doubt that this cotton investigation is coming to an end very soon, and in all probability the committee, from the evidence presented to them, will adopt amendments to the United States Cotton Futures Act.

Senator HATCH. In amendment to this bill?

Mr. GILBERT. To this very bill.

Senator NORRIS. Do you mean to say now that Senator Smith, if he were here today, would agree with Mr. O'Neal that cotton ought to stay in this bill?

Mr. GILBERT. Ought not to stay in as part of the amendments to the Commodities Act, but as part of the amendment to the United States Futures Act. It should stay, undoubtedly, in its present form, together with others that I think you ought to introduce.

Senator NORRIS. Now let us get down to the question. Is Senator Smith now in favor of retaining cotton in this bill as it was drawn?

Mr. GILBERT. Not as reported from the House, but in the amended form, as I understand it.

Senator NORRIS. As amended, it is stricken out entirely.

Mr. GILBERT. No; it is stricken out on page 2, and then you have several additional amendments beginning on page 27, dealing exclusively with cotton.

Senator NORRIS. On page 2 of this bill it says:

> The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, and eggs.

Mr. GILBERT. I am not speaking for the Senator, but I will say this, that in the negotiations that I understand have been conducted the word "cotton" will be restored.

Senator NORRIS. I was not through yet. Now this committee, when it reported this bill, struck out of the language that I have read the word "cotton", so as it stands now on the Senate Calendar there is a committee amendment in favor of striking cotton out of the bill. Now I would like to know—I have great regard for Senator's Smith's ideas about cotton, and this is giving me a great deal of trouble, and I would like to know now whether Senator Smith still thinks that cotton ought to be sricken out. I have had a great many conversations with other Senators and much to my surprise they did not agree with Senator Smith, and some of them are bitterly opposed to his idea, so we have got to meet that question whether we are going to strike cotton out or leave it in, and I would like to know, if you can tell us, whether Senator Smith now is in favor of this very amendment that I called your attention to.

Mr. GILBERT. I cannot tell you what the compromise will be. Probably they will restore the word "cotton" where it is now, then permit amendments to the United States Cotton Futures Act which specially relates to cotton, and then absorb so many of the provisions of the Grain Futures Act amendment as can be made applicable to cotton.

Senator NORRIS. I don't care anything about that. I am anxious to know whether Senator Smith agrees that the word "cotton" ought to be stricken out of this bill here.

Mr. GILBERT. I cannot speak for the Senator, but I am simply reflecting the views that I have heard here. From the little that I know about what is going in, the word "cotton" will be restored, and such of the provisions of the act as are applicable to cotton will be used.

Senator MURPHY. If you will indulge me a moment, please, Senator Norris, I think this is an answer to the question: Where cotton is stricken out, that is an amendment of the Grain Futures Act, and Senator Smith does not desire it as an amendment to the Grain

Futures Act. Reference to the amendment attached here discloses, section blank, "That section 1 of the act of August 11, 1916, known as the United States Cotton Futures Act, is amended by inserting after the word" what followed.

Now, my understanding is that Senator Smith—he has had a great many conferences—is undecided as to his course. He has had these cotton hearings, and it may be his purpose to go through with a cotton regulatory measure, but whether or not in the form in which this bill is before us remains to be seen. He is away from the city on necessary business.

Senator NORRIS. What I am trying to do now, I want to get this bill in such shape, if we can, that the question of leaving cotton in or taking cotton out will not result in a conflict between the cotton men of the Senate, because if it does there will probably be no legislation at this session of Congress.

Senator MURPHY. My understanding, Senator, is—that is clearly a possibility.

Senator NORRIS. The Senate is either going to pass this bill or it is not. One or the other. If it is desirable to pass it and there is a bitter fight between the cotton men as to whether cotton should stay in, we are going to be in the attitude of getting no legislation whatever.

Senator MURPHY. Yes.

Mr. GILBERT. I am not as pessimistic as you are about it, Senator. I think, speaking as a citizen who has been identified with the attempt to better conditions that prevail in the cotton futures exchanges for many years, it will be a public disgrace to regulate grain exchanges without regulating cotton exchanges.

Senator MURPHY. If you will excuse me, we will discontinue the subject. That is something you can take up with Senator Smith.

Mr. O'NEAL. I wanted this gentleman—he took it away from me over there—I tried to make myself very clear in my statement there that the cotton farmers want cotton in the bill. This is a commodity exchange bill. It goes much further than the grain futures bill. Grain, of course, dominates it, but you will notice from the list of commodities in there that farmers want all these commodities in there in which futures are dealt. Now, I hope Senator Smith—I have talked to him about it—I hope Senator Smith will agree to let this bill go along with cotton in it, and as I say definitely in my statement, I am sure that the Congress will go along with him on some amendment to the Cotton Futures Act in another bill.

I want to say to you, Senator, that the House Members, who also produce cotton and also represent cotton farmers, are very insistent that cotton stay in there, and I say as a grower of cotton and representing in my Southern States farm bureaus, and who produce cotton, that cotton should stay in this commodity exchange bill.

Senator NORRIS. Mr. O'Neal, I have talked with some of the House Members too who are cotton men, and some of them have said to me that if the Senate passes this bill with cotton out and insist on keeping it out, it will never get through the House in that form.

Mr. O'NEAL. They have told me the same thing. So that it seems to me that there is a danger point right there.

Senator NORRIS. Now, I want to ask you about butter and eggs. We have had evidence today that the butter and egg people want to be kept out of this bill. What do you think about that?

Mr. O'NEAL. I will just go back to the same statement there, Senator. As long as you have futures in butter, if you have futures in eggs, then they ought to be regulated.

Senator NORRIS. Your theory is that everything ought to stay in if it is dealt with in futures?

Mr. O'NEAL. Where they go out into the public markets. Just exactly like the statement you made on the Capper livestock bill. Where you have a public market, then I think it is the duty of the Government to set in there and with such an agency to protect not only the producer but the consuming public as well as the fellow particularly interested in handling the commodity. I think that is a sound principle and I do hope that this Senate won't get confused on cotton and let us be pestering you here as we have for the past 15 or 20 years to get this piece of legislation over.

Senator NORRIS. I think that all this talk about changing some other law—maybe a gentlemen's agreement or something of that kind may be important, but after all when we are going to vote on this bill that other law will not be before us; this is the bill that we are going to vote on, and it has either got to go in or go out.

Mr. O'NEAL. That is right.

Mr. GILBERT. May I say a word more on that, Senator? The cotton exchanges have been regulated under the United States Cotton Futures Act, in relation to contracts which are for the tendering and delivering of cotton under it. That has been a very effective measure. There isn't any reason in the world that this regulation should be tied up with that. The differences between grain and cotton are highly material.

Senator NORRIS. Well, I think that is immaterial when we have got to meet this question on this bill. I have heard that evidence. I have tried to attend and hear the testimony and I have been geratly impressed with it, but still we have got to come back to this bill. Are we going to put it in here or take it out? And no matter what you think or what I think, if the cotton men are going to disagree with it and are bitter about it, they will be powerful enough in a conference committee to kill it if they want to.

Mr. GILBERT. This thing simply smells to heaven as it has been revealed here for 3 months and it ought to be cured. Under this bill you have unlimited hedging, and no measure that does not restrict hedging on the cotton exchanges will be effective. Talk about speculation being curbed on the grain exchanges, we have had no speculation on the cotton exchanges for 5 years, and the object of any measure must be to restore that. How is there the slightest parallel between the two?

Senator MURPHY. Now, if you will excuse me, please—we must have some order here. We are considering now the interests of those who are concerned with the other commodities feature of this bill and we are not going into cotton at the moment. Have you concluded your statement, Mr. O'Neal?

Mr. O'NEAL. Yes, Senator.

Mr. GOLDSMITH. Before calling the next witness, Senator, I think that the record should show that the gentleman who answered some of Senator Norris' questions addressed to Mr. O'Neal was not a proponent of the bill whom we have asked to testify at these hearings.

I now want to introduce Mr. L. J. Taber, master of the National Grange.

STATEMENT OF L. J. TABER, COLUMBUS, OHIO, MASTER OF THE NATIONAL GRANGE

Mr. TABER. Mr. Chairman, I want to bring three points of view to the attention of this committee, and I come now not with a new philosophy.

The first point I want to make very clear, that the National Grange asks this Congress at this session, at the earliest possible moment, to pass H. R. 6772 in its present form, and for the National Grange I want the record to show that we do not accept the secretary's letter. We do not accept it. We accept the bill with the amendments suggested, but we do not accept those amendments only as a matter of last resort. I want to give the proof whereof I speak.

At the sixty-ninth annual session of the National Grange we reiterated the position taken long ago in these words:

> The Grange advocates needed legislation at the next session of Congress for further regulation of commodity exchanges, which while not forbidding legitimate hedging should prohibit gambling in agricultural products.

This copy of the journal of proceedings of the National Grange is my bible before a legislative committee. This is not a new fight for the Grange. Our first fight was this fight, the same principle. In 1867 we commenced the fight for regulation of railroads. That fight was fought by every railroad in the United States. We fought for justice because it cost more to move a bushel of wheat from the Corn Belt to the seaboard than the wheat would bring. We fought because of injustice, because of the need of control, and because of monopoly in transportation. That fight was won, and even the railroads themselves, with hardly a single exception, rely on that regulation today, and they appeal to it for higher rates as well as for other services.

The Grange commenced about the same time a contest for regulation of exchanges so that the producer would receive a larger share of the consumer's dollar, and I want to emphatically protest against high-paid representatives of other interests masquerading as defendants of the farmer. They may be our friends. I think they are. I am not calling any one our enemy, but organized agriculture can speak for its members. It is the only agency that can speak, because our client is the farmer.

Someone testified here that they want the law so clear that they could keep their clients out of the pen. I want the law so clear that I can keep my clients out of the poorhouse. And so I am saying that, because the Grange insists on the passage of this legislation at this time in substantially the same form. We accept the amendments by the Secretary only as a last resort. We want the bill about as it is. If that cannot be secured we will accept the amendments.

The second point I want to make clear is that the discussion of yesterday emphasized our contention for the need of legislation of this kind and character. It was testified by two witnesses that in a period of great financial distress, a period of great failure and great uncertainty, there had been practically no failure in the grain exchanges. I rejoice in financial stability. I rejoice in seeing other people have prosperity, but we insist on passing it around and bringing it back as much as possible to agriculture. And I want this point to show in the record, that during the period of greatest distress known in all the history of American agriculture, with the possible exception of 1873 and maybe 1837, but I think 1873, the period of agriculture's greatest distress, the processors and handlers of agricultural and dairy commodities show by their own balance sheet and their own dividends the greatest earnings.

Again, I say that the thing we contend for is honest and fair regulation, therefore we do insist, as a representative of organized agriculture, speaking for 8,000 local unions and for 800,000 members, for an organization that will hold its seventieth annual session in the near future, for an organization composed of farmers and controlled by them, that this Senate and this Congress do not allow itself, Senator Norris, to become in apparent confusion about amendments and about misunderstandings. I think it will be a tragedy if this Senate, in view of what has happened—when I testified here 2 years ago and 4 years ago, and before that, we heard the same voice, "Give the Chicago Board of Trade a chance and it will control its own affairs; it will drive out the crooks; it will drive out dishonest practices", and yet we have seen men in the very shadow of the penitentiary for violation of the law that no one here defends.

Pass this law and pass it at this session of Congress and don't allow yourselves or any other Senators with your great wisdom and your great ability to become confused because of cotton, to become confused of some mistake. The principle involved is justice and fair regulation and honest legislation and a fair law.

I want to say that if anybody claims the right to use the machinery and the protection of the Government and the right of the mails to gamble in futures—I withdraw the word "gamble"—to deal in futures, if he is going to use that right and that facility he should submit to regulation. He places on organized agriculture, the farmer out yonder, whether he grows grain or cotton, whether he produces milk or butter, whatever he may have, he places upon him a great disadvantage. Nothing should happen in the dark. If you are going to utilize the facilities of Government for protection, we must demand that these transactions be open and above board, exactly what they are said to be.

The Grange is not opposed to dealing in futures. We are not opposed to legitimate hedging, but we are opposed to the type of speculation that allows some man under a fictitious name to be on both sides of the same commodity and on both sides of the same gamble. That is not in harmony with American ideals. It is not in harmony with the principle for which we stand and contend here today.

The third point that I want to make, and I want to make that with some emphasis, I am greatly disappointed that many well-

meaning and well-informed and patriotic citizens have allowed themselves to become the enemies, apparently, of cooperative marketing. I want to challenge those people that have enjoyed the principles of the corporate structure of society; I want to challenge those people that have used the power of corporate legislation to enjoy special privileges and special benefits; I want to challenge them to show where they can find a right to deny me and my clients that same principle and that same right and that same privilege.

I will admit that we cannot change the distributing agencies that cover the continent. I admit that we cannot build corporations with millions of paid-up capital, but I do submit that we can bring the millions of producers together and we can combine their ability and their brains and their resources, and through managerial ability we can put ourselves to the same level and on the same principle as the corporate structure of society. And I want to say to you, and I want to say to my friends in the rear of the room, that cooperative marketing is but democracy and American ideals raised to the highest point.

Cooperative marketing robs no man. It robs no group of men. It gives to the great mass the right to use some machinery that can hold their own in the development of American civilization. We will not stop the wheels of progress, and I am one that would not regiment mankind, but I am one that would give to every man an equal chance, that would not close the door in his face either by science or by the financial structure of society.

Therefore, I again insist that any legislation that crimps the right of cooperative organization to represent his clients, crimps the right of American ideals and American institutions. You must give the cooperative the same facilities, the same machinery, the same opportunity that the corporate structure enjoys. We must have the right to distribute our patronage dividends; we must have the right to return to our members what mass buying, what mass merchandising, what centralized control will give, and to deny that is to deny every principle of Americanism and every foundation upon which we have built.

Cooperative marketing gives to the farmer a control in his own affairs. It gives him a voice and a sense of responsibility in the handling of his own business. Second, it gives him a chance to control the quality and the type and the material that he has to sell. Third, he can secure the type of service that the farmer wants, and I am oldfashioned enough to believe that if we want a thing, if it is in harmony with American ideals, if the farmer wants to run his own business, if the farmer wants to make a mistake he has got a right to make some of them—God knows, other people make enough of them.

Senator NORRIS. Even the Liberty League makes some once in a while. [Laughter.]

Mr. TABER. I have heard so, and some of their experts. [Laughter.]

Fourth, as the farmer increases—and this, I think is where the shoe pinches—as the farmer increases the size of his cooperative he adds to his ability to use the law of supply and demand in his own benefit rather than have it used against him.

And finally, I think the farmer, through cooperation, can keep open the avenues of market and credits, and I want to say, Senator Norris, that I believe that the greatest function than can be rendered to this civilization is to keep open markets and credits to the little man, to the small farmer, to the small producer, to the small merchant, and only cooperation, only collective bargaining, only teamwork will do it.

I have taken more time than I intended to, and the only point that I want to present in closing is that as the spokesman for a group of people who for 69 years have kept before themselves a definite goal written in their declaration of purposes 67 years ago, that we desire proper equality, equity, and fairness, protection for the weak, restraint upon the strong; that we can have justly distributed burdens and justly distributed powers. That is the foundation upon which the Grange is built. It seeks to injure no man. We want the board of trade to prosper, we want business to prosper, but we demand the right to prosper ourselves. We want the right to control in a fair manner and in a fair way the agencies that deal for us in our actions.

We have built a complicated marketing structure, I think too complicated. We cannot quickly change it, and until it is changed under the long, slow method of evolution, we will have to have something like the Chicago Board of Trade, and while we have that we want the rules of the game so clearly written and so fairly enforced that there will be no holding behind the line, there will be no crimping and there will be no off-line plays.

So, as I have said, we want this bill to pass. The Grange wants it to pass. Our organized farmers want it to pass. It doesn't go as far as we would like it to go; it doesn't include everything we would like, but I plead with you, don't let somebody fool you. We will have no legislation until we can have the legislation we want and the kind we want.

I shall not discuss cotton. We have many cotton growers in the Grange in the South and in the West. Their views, I think, have been pretty clearly stated in that they would like their commodity included and the crop controlled, but I do not think it is necessary, Senator, to get into a feeling that we will split on cotton and get nothing.

Senator NORRIS. Now, Mr. Taber, don't misunderstand me. I don't claim to be an expert on cotton. I am not advocating that cotton be left in or taken out, either one or the other, but you have got a certain number of the members on the Senate and the House committees who are cotton experts, and they are really experts. When I am in doubt I follow them, but when your experts disagree and either side is strong enough to defeat legislation, it doesn't make any difference what you do or what I do, if we get them fighting among themselves we will get no bill. That is my judgment from my experience.

Mr. TABER. That is the very point I am pleading against, Senator, and I am hoping that this Congress will not make that error. I do insist that this legislation be passed at the earliest possible date.

Senator FRAZIER. Mr. Taber, if the farmers, the producers of grain or cotton handled by these exchanges sell their product at a loss, is there any excuse under heaven to let somebody or any group that manipulates that market make a profit on those products that the farmer sells at a loss?

Mr. TABER. Well, I want to tell you, sir, during the terrible times of 1932 and 1933 it seemed pretty tough to see the profits made and reported on certain corporations in the processing and handling and dealing in foodstuffs. It seemed pretty tough after the heartbreaks of the American producers.

Senator FRAZIER. And the profits that are made in these exchanges come out of either the producers or the consumers?

Mr. TABER. I wouldn't say all of it. There is legitimate hedging, I think.

Senator FRAZIER. I am not talking about legitimate hedging. That is a different proposition, of course, but I mean the profits on the exchanges.

Mr. TABER. I am fearful that much of it does; yes, sir.

Senator MURPHY. Thank you, Mr. Taber.

Mr. GOLDSMITH. We have one more witness that we would like to present to the committee today. I take pleasure in presenting Mr. Edward E. Kennedy, secretary of the National Farmers Union.

STATEMENT OF E. E. KENNEDY, KANKAKEE, ILL., SECRETARY OF THE NATIONAL FARMERS UNION

Mr. KENNEDY. Mr. Chairman and gentlemen of the committee, I should like to state that for 33 years, nearly 34 years now, National Farmers Union has incorporated in the purposes for which it was organized, one of them to eliminate gambling in farm products on boards of trade, cotton exchanges, and other speculators. That is the position of the Farmers Union today, and in the bill that is before the committee, while, perhaps, we might like to go further than this bill does, yet we are in favor of its immediate enactment into law and its passage substantially in the form in which it passed the House or in which it is now, as near as possible.

During the past 15 or 20 years, especially the past 15 years, and even beyond that—in fact, ever since the grain exchanges were set up, they at no time during that whole history have ever been able to speak for the organized farmers. The farmers that are organized are able to speak through their own organizations. I want to make that point very clear here, because in times gone by, and even in the present time, those who speak for themselves many times undertake to speak for themselves in the name of benefiting the farmer. So I want to make that point very clear.

Another point that I want to make clear on our position in this respect is that those who make up the membership of the Farmers Union in the 36 States are a unit in wanting this bill enacted into law. They are also a unit in knowing that it is unjust and unfair to have anyone, regardless of how fine a gentleman he may be, to have the high privilege of gambling in the wages of the American farmer. There is no group in America, there is no group of wage earners, there is no group of salaried employees, there is no group of business executives in the United States that I know of that would be willing to submit their salaries, their wages, or their income to the proposition of being dealt in for profit up and down.

When the Securities and Exchange Act was passed that sought to regulate the dealing in the securities of business institutions in the United States that were listed on the stock exchanges. Now they may be gambled up or down, or speculated in and rise and fall, and it may do great damage, but in the case of the commodity exchanges there is the question not of gambling in the securities or gambling in the capital of the agricultural industry but gambling in the income, that is, buying it and selling it far over and beyond what is produced each year.

Senator FRAZIER. You make that statement on the basis that the price the farmer gets for the produce is income?

Mr. KENNEDY. Yes, sir; it is. It is his wages. What he gets for his grain and his cotton and his livestock and his eggs and his poultry is all he has to pay interest and taxes and buys the products of labor and live as he can live.

So in closing my short statement here this afternoon I just want to say that the National Farmers' Union would like to see this bill that is before you enacted into law. We would like to see that done at this session of Congress, because we feel that the enactment of this bill here will not only protect and limit and restrict probably not far enough, but at least it is a definite and positive step toward the curtailment of manipulation of markets for grain and other farm commodities on the commodity exchanges.

And one more point: The Farmers' Union is tremendously interested in this; we have been interested in it throughout the entire life of our organization, and that is the cooperative marketing of commodities produced by our people. There was a time in the history of cooperative marketing in the State of Iowa, where I was born and raised, when the courts, perhaps not understanding the philosophy of cooperative marketing, sought, and did, back in 1910 or 1911—they issued restraining orders, and the Supreme Court of Iowa upheld the right of an old line buyer of hogs to dissolve a cooperative association. But those things have changed, and virtually in every one of the States now the Supreme Court of the United States has recognized that right.

The cooperative marketing organizations are simply means by which the farmer can go into the market place to market and handle his own farm commodities. And it is not enough that the farmer merely assembles out here at country points his commodities; he certainly has a right to go into the market place. So we hope that the provision with respect to protection of cooperatives and allowing them to distribute to their members their earnings will remain in the bill.

Senator MURPHY. We appreciate the information you have given us, Mr. Kennedy, in this short statement.

Mr. TABER. Senator Murphy, may I correct a statement that has been called to my attention, relative to the Secretary's letter? The Grange does not accept that part of the Secretary's letter which deals with the returning of patronage dividends. There is much in the Secretary's letter—I have not seen the entire letter, have not had a chance to read it, but only that part dealing with the patronage dividends we do not accept; the other part we do.

Senator MURPHY. The committee will stand in recess until tomorrow morning at 10 o'clock, and the hearings will be concluded tomorrow afternoon.

(Whereupon, at 5 p. m., the committee adjourned until 10 a. m., Thursday, Apr. 23, 1936.)

TO AMEND THE GRAIN FUTURES ACT

THURSDAY, APRIL 23, 1936

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The committee met, pursuant to adjournment, in the committee room, 324 Senate Office Building, at 10 a. m., Senator Louis Murphy presiding.

Senator MURPHY. The committee will be in order.

Mr. IRVING B. GOLDSMITH. Mr. Chairman, when we recessed yesterday, we were at the point where I had stated to the committee that the proponents of the bill favored its passage as passed by the House in House Resolution 6772, plus the letter written by the Secretary of Agriculture to Senator Smith, chairman of this committee, in June of 1935, copies of which were furnished to the committee members, and thereafter before taking up the bill in detail after the amendments suggested by representatives of the board of trade and other opponents of the bill, you heard testimony from leaders of the three large farm organizations—the Farm Bureau, the Farmers Union, and the Grange.

This morning it is our purpose, with such deviations as may be required because of witnesses being unable to be here at the morning session, to take the bill H. R. 6772, with the Secretary's proposed amendments, and discuss it in chronological order for the benefit of the committee.

Turning to the bill on page 1, section 2, there has been no discussion of any change in that section. We then come on page 2 to section 3, which amends section 2 of the present Grain Futures Act in several particulars, and one of the first is found in section (a) which would change the word "grain" to the word "commodity" to include among other things butter. There was some discussion on the part of opponents of the bill that there had been no testimony that there was any desire on the part of anybody to have commodities other than grain included and that no representatives of producers of other commodities were in favor of this addition.

At this time I want to present as our first witness this morning Mr. Donald Kane, attorney for the National Cooperative Milk Producers Federation, Washington, D. C.

STATEMENT OF DONALD KANE, ATTORNEY FOR NATIONAL COOPERATIVE MILK PRODUCERS FEDERATION, WASHINGTON, D. C.

Mr. KANE. Mr. Chairman and Senators, I am here as counsel for the National Cooperative Milk Producers Federation, a producer

organization composed of 55 cooperative-marketing associations throughout the United States, engaged in cooperative marketing of milk and dairy products.

This morning I desire to represent particularly our butter members, that is, our cooperative-marketing associations who are engaged in the marketing of butter. Of these groups, Land o' Lakes Creamery, Inc., of Minneapolis, is probably the largest. It is the centralized sales agency for 400 local cooperative associations located for the most part in Minnesota, Wisconsin, North Dakota, and South Dakota. The second largest organization is the Challenge Cream & Butter Association, operating in Los Angeles. It has a membership of 18 local cooperative-marketing associations, located in California, Idaho, Wyoming, Colorado, Nevada, and Utah.

I also represent the United Dairymen's Association of Seattle, Wash., which represents about 12 important dairy cooperatives in the State of Washington and in Idaho. I also represent the Interstate Associated Creameries of Portland, Oreg., a cooperative organization which operates on an agency basis for eight cooperative creameries and one milk-marketing association in the State of Oregon. I also speak today for the Dairy & Poultry Cooperatives, Inc., operating out of Chicago, which has a local membership of 50 local cooperative creameries located in the Middle West, in Iowa, Nebraska, North Dakota, South Dakota, and some other States. I also represent the Mid-West Producers Creamery, Inc., of Indianapolis, Ind., which is a group of 19 local cooperative creameries in Indiana and Michigan.

According to a report of the Farm Credit Administration just issued entitled, "Cooperative Marketing of Agricultural Products", these organizations which I have just mentioned represent approximately 20 percent of the output of creamery butter in the United States. According to the same report, all cooperative creameries in the United States produce approximately 36 percent of the creamery butter sold in the United States.

I have here a chart showing the fluctuations in butter prices for the year 1935. That chart will show that prices fluctuated from 39 cents down to as low as 23 cents in June of last year.

You will note that there are violent fluctuations on that chart, and our butter members don't believe that all the fluctuations on the price of butter represented in this chart can be attributed to supply and demand conditions in the butter industry. We feel, and I think we have reason to be justified in feeling, that a considerable part of those fluctuations are due to speculative influences on the butter markets.

Senator POPE. Does that have to do with the finished butter or butterfat?

Mr. KANE. That is finished butter. This black line is the price of 92 score butter at New York. The broken line is the price of 92 score butter at San Francisco and the dotted line is the price of 92 score butter at Chicago.

Of course, you understand, Senator Pope, that these fluctuations in the finished price of butter at the central markets are represented or felt back in the local communities the next day or the same day in the butterfat delivered to the creamery.

I have communicated with each of these cooperative associations engaged in the marketing of butter and other dairy products. I believe that everyone of them has a membership in one of the commodity exchanges, either San Francisco, New York, or Chicago.

I have a letter here which I think represents generally the feeling of all of our fellows, and I would like to read it. It is from Mr. P. L. Betts, general manager, Dairy & Poultry Cooperatives, Inc., Chicago, Ill.:

> Replying to yours of the 14th instant wherein you make inquiry in regard to the attitude of our organization toward the commodity exchange bill now before the Congress. We are quite anxious dairy and poultry products be included in the exchange bill.
>
> While the produce exchanges have not been apparently subjected to as much "skulduggery" affecting the interests of the producer as has been the case with grain, cotton, and some other products, it is now a noticeable fact that the big grain firms as on the Chicago Board of Trade are all taking membership in the Chicago Mercantile Exchange and the operations of these big so-called "La Salle Street crowd" are furnishing more and more the volume of speculative trading in the futures markets on that exchange. It is our opinion if certain practices are denied them in connection with the grain, cotton, and other commodity exchanges, they will transfer their operations largely to the mercantile exchange and put into effect these same practices that have proven so detrimental to the producers in the other exchanges. All ready we think we can notice an increased application of such practices in our exchange, and we believe this "La Salle Street crowd" to be largely responsible for same.
>
> We do not object to short selling, especially so far in as it applies to the hedging of actual products put into storage; however, we believe if the cooperatives were let alone, in a very short time we could put into effect marketing machinery that would successfully distribute dairy and poultry products throughout the year without the aid or benefit of futures trading; and at the same time create much steadier markets and lessen greatly the wide fluctuations now often in effect.
>
> We, therefore, ask the federation to use every possible influence toward holding the dairy and poultry produce exchanges in line and put them under the same regulations as would apply to the other commodity exchanges.
>
> Yours very truly,
>
> DAIRY & POULTRY COOPERATIVES, INC.,
> P. L. BETTS, *General Manager*.

I think, Senators, that that represents the general feeling of our people. Grain and cotton and other commodities are under control in the future marketing operations of such commodities and our people feel that the exchange handling butter should be under some degree of governmental control.

Senator FRAZIER. Is there any necessity for your organization to have facilities for hedging to protect their sales?

Mr. KANE. Some of them do hedge; that is, when they put butter in storage to be taken out during the winter, some of them buy butter futures against the butter that they put into storage, but I would judge that the future trading by our cooperative members is very, very light. I don't know whether they should do it but most of them, if they carry any butter at all, carry it at their own risk.

Senator POPE. Is trading in butter and egg futures any appreciable part of the trading on the Chicago Board of Trade?

Mr. KANE. There is a separate exchange for butter and eggs, such as the Chicago Mercantile Exchange.

Senator POPE. Is that connected with the board of trade?

Mr. KANE. I think it is entirely separate.

Senator NORRIS. I think it is entirely separate.

Mr. KANE. Most of the future trading in butter is done at Chicago. I think only 7,000,000 pounds of butter were traded in futures on the New York Exchange last year, but in Chicago there were about 400,000,000 pounds traded on the exchange.

Senator POPE. That would mean that this other exchange dealing in butter and eggs would have to become a licensed or contract market like the Chicago Board of Trade?

Mr. KANE. The Dairy & Poultry Cooperatives, Inc., does handle poultry and Mr. Betts' letter referred to poultry and eggs. The only authority I have to speak today is to ask that future trading operations in butter be included in this bill.

Senator MURPHY. Mr. Kane, this chart you have submitted here shows, as you say, wide variations from 22 and a fraction cents a pound to approximately 38½ cents a pound.

The low point is presumably at the period of flush production—June, July, and August.

Senator POPE. What month is the high point?

Senator MURPHY. The high point is April in Chicago and New York and January and February in San Francisco. The production in those summer months is very much heavier than in those other months?

Mr. KANE. Yes; that is what is called the flush, and at that time butter goes into warehouses to be stored for the winter months, and the price goes down naturally to a level where the speculators and merchandisers both feel they can put it into storage and pay the charges and get out during the winter months.

Senator MURPHY. Your case, according to your testimony, rests on the supposition that this variation in price indicates manipulation?

Mr. KANE. Not all of it, Senator.

Senator MURPHY. There isn't any independent testimony supporting any manipulation or skullduggery by these commission men that you have to present to the committee?

Mr. KANE. No; I think back during the Hoover administration, Senator Capper introduced a bill to prevent short selling in butter and eggs and at that time Secretary of Agriculture Hyde wrote a letter to Senator McNary who was then chairman of this committee—and that letter is probably in the records here—saying that in his opinion the operations in butter and eggs should be controlled on future markets because they were speculations in the rise and fall of the butter market which could not be accounted for by long-time supply and demand conditions.

Senator MURPHY. We have had no investigation by the Government itself of these exchanges with a view to ascertaining whether or not the practices are prejudicial to the producer?

Mr. KANE. There has been no independent investigation.

Senator MURPHY. What do you think about an investigation of that sort preceding legislation? Do you think we ought to go ahead and legislate on the assumption that something is wrong? What would you think about an investigation to ascertain the facts?

Mr. KANE. I think this legislation would not hurt anybody that is a legitimate, honest operator. This legislation is not going to hurt anybody. Even if the practices do not exist, this legislation won't hurt a soul, as I see it.

Senator MURPHY. My view is that we ought not to legislate unless there is some definite evil to cure; that is my own idea. There is not an established, proven evil here; there do not appear to be practices that we know are operating to the prejudice of the producer from any evidence adduced. Why regulate a citizen unless we know that he ought to be regulated? Legislation should be used for the purpose of correcting evils. There is no testimony here of an evil, but merely the assumption that because these prices do fluctuate widely—you may be perfectly right, and I don't say that you are not—there is an evil condition; but ought we not to have some basis of fact for legislation?

Senator POPE. How much trading is there in butter futures?

Mr. KANE. During the flush period about 100,000,000 pounds of butter goes into storage to be held over the winter months; and the hedging operations on the Chicago market for the year I have figures for, the last year or the year before, were 400,000,000 pounds of butter traded in in future operations. That means that for the 100,000,000 pounds of butter that were legitimately hedged, 300,000,000 additional pounds were traded on speculatively

Senator POPE. With that much hedging there is undoubtedly considerable speculative trading in futures?

Mr. KANE. Our fellows think so, and I think the Department of Agriculture thinks so; but since they haven't been under control and we have no reports from the exchanges to work on, it is impossible to come before the committee and say definitely that they have done this or haven't done that, because they have never reported to the Secretary of Agriculture. He has never had any control of any kind over their operations.

Senator MURPHY. Of course, we all know that the butter and egg men went where the lights were bright and had a roll to spend; we all know that. [Laughter.] It is not proven that they held up anybody to get it.

What do you think about a resolution to have the Federal Trade Commission or somebody else investigate this system of marketing butter and eggs with a view to determining wherein it is oppressing the producer, before we legislate?

Mr. KANE. The thing that is worrying me about that is what is happening to the commodity exchange bill so far as grain is concerned. They have been investigating and reinvestigating and having hearings and more hearings; and, as has been testified here, it has taken 10 or 15 years before it looks like it is getting to a point where Congress is going to act.

Senator MURPHY. The fact that cotton is out of the bill explains this legislation.

Mr. KANE. I am speaking of how long the grain fellows have been trying to get this legislation.

Senator MURPHY. Isn't it because it has been tied up with cotton?

Mr. GOLDSMITH. It has only been tied up with cotton during the last 2 years at most. The grain people have wanted additional legislation since 1922; and every Secretary of Agriculture, according to Marvin Jones' report, has recommended additional legislation.

Senator MURPHY. I am only a young fellow here trying to get a start. [Laughter.] And my knowledge covers only the last few years.

Senator POPE. According to the reports of the Grain Futures Administration, they have recommended this legislation continuously.

Senator MURPHY. Is that all, Mr. Kane?

Mr. KANE. Yes. I don't want to be unreasonable and say these people should be regulated without any evidence at all, but I believe the evidence of our fellows, who have been marketing the butter for these farmers for the last 10 or 12 years and the statements that I know you can get from the Department of Agriculture would indicate that there is no reason why they should receive any preferential treatment over the commission men who are handling grain, cotton, or any other commodity.

Senator MURPHY. Thank you, Mr. Kane.

Mr. GOLDSMITH. Before passing section 3 (a), which this witness, Mr. Kane, has been discussing, I should like to point out that in the report of Marvin Jones on the bill presently pending before the Senate, he stated that the very fact that the security exchanges were being regulated made more necessary the regulation of the commodity exchanges, because speculators would transfer their activities and obviously it would follow, if Mr. Jones is correct in that assumption, if the grain exchanges are regulated some of the speculators may transfer their activities to other commodity exchanges.

First, I should like to make this very brief statement: It was indicated that the *Olsen case*, sustaining the Grain Futures Act of 1922 was predicated upon known abuses. As I read that case, it was predicated upon the possibility of abuses which would interfere with the free flow of interstate commerce in grain. While, of course, Congress doesn't have to legislate until it has evidence of abuses, there is nothing in that opinion that indicates that Congress can't any more than Milwaukee can't have policemen because it has a very fine record so far as crime is concerned.

Passing to section 3 (b), there are two changes recommended by the Secretary of Agriculture, to which I should like to call the attention of the committee. In line 15, on page 2, insert the number "75" where the number "50" now appears.

Section 3 (b) devotes itself to definitions, and the purpose of changing to 75 is to require that a cooperative association within that definition be 75 percent producer-owned rather than 50.

Senator POPE. Do you know of any objection from any source to increasing that percentage from 50 to 75?

Mr. GOLDSMITH. No, sir; the farm groups and cooperatives are in favor of it, and I have heard no objection even from the opponents of the bill. The only purpose of allowing some tolerance is that some farmers do move away from the farms and it is impossible under some State laws to increase their capital stock.

The other change is also formal. Line 21, on the same page, after the word "for", which is the third word from the end of the line, insert the words "or with." That is a formal change by way of clarification of language.

That brings us to Section 4a (1) and its component parts, which we find commencing on page 4, line 13 of the act, and on which we shall have a witness, but I want to remind you of my statement yesterday, that while there was discussion by the opponents of the bill as to a 2,000,000-bushel limit, and at times a 500,000-bushel limit was referred to, as if this bill limited speculative open trades to

either 2,000,000 or 500,000, there is of course no such language in this provision. It simply authorizes the Secretary of Agriculture, or rather the commission of three Cabinet members, when it finds a situation to exist to require it, after due hearing and notice, to set certain limits.

With that preliminary observation, I should like to call, as our next witness, Mr. John Vesecky, of the Kansas Farmers' Union.

STATEMENT OF JOHN VESECKY, PRESIDENT, KANSAS FARMERS' UNION, RUSH COUNTY, KANS.

Mr. VESECKY. I am here representing the Kansas State Farmers' Union. My name is John Vesecky. I am a farmer of Rush County, Kans. Besides being president of the Kansas State Farmers' Union, I am also president of the Kansas Committee of Farm Organizations, which is composed of the Farm Bureau, the Grange, and the Farmers' Union, besides all the large cooperative groups in the State.

I have had some experience in handling grain, first, as a farmer, of course, and then as manager of a farmers' elevator, and afterwards as an executive officer of a large grain cooperative that operated on the Knsas City Board of Trade, and part of the time on the Wichita and Chicago Board of Trade.

While I do not at all want to qualify as a grain expert, my experience and acquaintnances on the board of trade have given me some idea of the system under which grain is being sold in the United States. While a member of the Kansas City Exchange, I made many personal friends among the commission men of the exchange, and I respect a good many of them highly, but the system itself I cannot say that I respect. The system is wrong. It is an auction system. An auction system cannot help but make prices abnormally low in times of large supply and abnormally high in times of short supply.

Any storekeeper, any merchant, can clear his shelves by using an auctioneer at a very small cost per unit, but the result, the prices he gets, is what spells the difference between profit and loss or going up or ruin.

In traveling over the State this year as president of the Farmers' Union, and in past years in attending meetings and conventions, I have met thousands of farmers in the State and almost invariably, with perhaps the exception of such agriculturists as Dan Casement, they are in favor of control legislation that would give some authority to a friendly, impartial commission, or part of the Government, to control and regulate the grain exchanges for the benefit of both the producer and the consumer.

The farmers do not subscribe, as I said, to the statement of the board of trade that the present grain marketing system is the most efficient, the most economical, and the best system that could be devised, and that they are well taken care of under the present system. They can't help but notice the dilapidated farms, the abandoned farms, the mortgaged farms that this system has brought about. Certainly an efficient, good system of marketing our products should do for us what a good system of marketing a manufacturer's products does for him—it should bring us somewhere near the cost of production so that we won't have to let our farms run down, so that we won't always, after we raise a crop, have to sell

it for almost nothing, and when we don't have anything to sell, the consumer pays an exorbitant price for what he buys from us.

The system, as it is now, was not built by the farmer. The farmer, because of his location and because of lack of organization, has left that to his self-professed friends, the members of the grain exchanges, and they have built the system themselves, for themselves, to be run by themselves, and I think generally to take care of especially their own interests.

The main object in trading in grain of the members of the grain exchange naturally is volume. The more they can put through the exchange, both in cash grain and in futures, the larger the income of the members and the better is their business. And this brings us to their objection to section 4 (a) of this bill. They fear that if this section were included in the bill, if some department of the Government were given the right to limit the total lines carried by speculators or to limit the daily sales and purchases by speculators, there might be a decrease in speculative volume and a corresponding decrease in their income.

I am fairly certain that, inasmuch as they are bright men, they do not honestly think that it would make it impossible to hedge the actual purchases of cash grain or sales of flour or whatever it might be in the markets if a reasonable limit was placed on long and short lines. I know that they feel in their own hearts that that isn't so because, after all, the large volume of speculation is done by the small speculators, as a rule. It is only in times when it is possible to manipulate the market that these big boys come in, either with large, long purchases or short sales. The total volume as compared to the billions of bushels handled annually on the grain exchanges by these large speculators is not so large, but what hedging could be very well taken care of at all times with just ordinary volume and ordinary speculators in the market.

The grain exchanges propose to regulate this business of excessive speculation by increasing the margins rather than by limiting the lines. Let's see how that would work. A granary man has a good customer. This customer wants to trade. He begins to trade more and more. Is that grainman going to offend him by saying, "Look here, I am going to raise your margin", or is that grain exchange, as a whole, going to raise the margin on the very customers that they would like to have trading with them? They will be very slow to do that. They will let it go to the very last, when perhaps it will do more harm than good, because an overextended long or an overextended short, either one, if they subject him to higher margins, might find himself in the position in which some longs and shorts have found themselves, where they couldn't cover those margins and necessarily would have to dump either their long or short lines on the market and create the very condition against which we are trying to guard with this provision in this bill.

Senator MURPHY. Mr. Vesecky, may I interrupt at that point to ask you a question?

Mr. VESECKY. Yes.

Senator MURPHY. Do you think that action would be taken in the board of trade in applying this punitive commission, we will say, of 20 percent on an excess line by the individual broker in the exchange, or as a result of action by the board itself?

Mr. VESECKY. It might be taken, and very likely it would be taken by the action of the board itself, because the Grain Clearing Corporation handles that.

Senator MURPHY. The point I wanted to develop in that relation was that presumably the advice given by one broker to his traders, his large traders, would be the advice given by all brokers. I just want to ascertain where self-interest lies there, if his advice to these particular large traders that they couldn't trade any further except by paying this punitive commission would prejudice his own individual business.

Mr. VESECKY. The boards of trade, Senator, are controlled entirely by their own members.

Senator MURPHY. Yes.

Mr. VESECKY. The influence of those members on the Grain Clearing Co., or whatever it is, and on the different governing boards of the board of trade, is such that self-interest would have lots to do with it before they would put in these punitive—or whatever you say—higher margins. The larger traders, the larger operators on these grain exchanges, have lots of influence, and, naturally, the self-interest of these traders would tend to keep that out as long as possible before they would apply these higher margin requirements.

Senator MURPHY. Of course, on that point, or related to it, rather, there is the term "excessive speculation"; the contention of the opponents of this bill, representing the board of trade, is that they should be left in conference with a representative of the Grain Futures Division of the Agricultural Department to determine when speculation is excessive.

We haven't here the benefit of anybody's judgment as to when speculation is excessive. Would you say that when purchases and sales equal or exceed the cash grain that then trading becomes excessive?

Mr. VESECKY. They will always exceed the cash grain, Senator, because of the intertrades.

Senator MURPHY. Well, in your judgment, would that be excessive speculation?

Mr. VESECKY. Not necessarily. It depends entirely on conditions, Senator. There are times when the market——

Senator MURPHY. Will you indicate under what conditions you would deem speculation excessive?

Mr. VESECKY. At the time when grain is moving to market in heavy volume—the market is burdened with that cash grain for all it can stand, and legitimate hedges also are a burden on the market. At that time a trader comes in and starts building up a large short lines as an additional burden on the market. At that time it wouldn't take such a large short line to be excessive speculation as it would at another time when the market could better stand the speculation.

That is why I think it should be left to an impartial commission, a commission that has the interests of both consumer and producers at heart and not merely the interests of the board of trade to determine it.

Senator MURPHY. I think that is the hub of the whole thing. It was testified to here that it is difficult to find buyers for the grain when it is coming into the market for sale after harvest. It occurs to me that putting out a short line at that time could very easily

depress that market. We know of the self-interest of the trader in the grain exchange. He wants to get as large a volume of business as he can, naturally. It doesn't interest him particularly in relation to the profit from his transactions what the price is.

Your conclusion is that his self-interest in the commissions to be made from trades would deter him from deeming it excessive speculation, and which trades you think might have the effect of depressing the price of grain coming on the market.

Mr. VESECKY. Yes.

Senator MURPHY. You are satisfied of that in your own mind, that it would do that?

Mr. VESECKY. Yes, sir.

Senator MURPHY. You may go ahead.

Senator CAPPER. Mr. Chairman, I think I owe it to the members of this committee to say that I have known Mr. Vesecky nearly all his life in Kansas and there is no man in the State who is as well qualified to come here and speak for the producers of Kansas—at least, there is no one better qualified. As he stated, he is not only president of the Farmers' Union, the largest farm group in Kansas, but he is president of the Farm Council of the State. I am glad to say that the farmers of Kansas are organized in a strong way; that is, they are working together, the various farm groups, in an honest effort to solve their problems.

They are working more effectively, I believe, more intelligently than any other State about which I know anything, and he is the head of that organization. He is not an agitator. He is what we call a dirt farmer out in Kansas, and when he comes here and speaks for this measure I don't hesitate to say that he voices what is in the minds of 95 percent of the farmers of our State. His testimony, I think, is worthy of most serious consideration.

Mr. VESECKY. The farmers of the State feel that there is no danger to any legitimate hedging or trading on the board of trade by the adoption of this bill. There will be no great limitation of the general amount of trading. If it does limit these great big speculators from building up big lines, or if it does limit a man during any one day deliberately putting a pressure on the market that it can't bear through excesive selling or buying during that day, there will still be at all times sufficient volume there for all legitimate hedging purposes. There is no effort made in this bill to limit legitimate hedging purposes or legitimate hedging in the grain markets.

The farmers have long considered that they didn't get fair treatment in the market places of the country, and as individuals they couldn't get into these market places. So they organized associations to get into these market places—the cooperatives. We tried, as soon as we organized the large cooperatives, to get into these market places, and we have found opposition from the organized boards of trade. It seems to be the idea that they organized this club for their own special benefit. Even if it does handle and set the price of everything that we raise, still it is their club and they are going to run it.

It required a law, the Capper-Tincher bill—I think that was the first one we had of national importance—to compel these grain exchanges to let the cooperatives in as members, and even then, when

they admitted them as members, they made some of them sign an agreement that they would violate the cooperative principle by not paying patronage dividends. The Farmers' Union Jobbing Association of Kansas had to sign such an agreement before they were admitted to membership on the Kansas City Board of Trade.

The Farmers' Commission Co., of Hutchinson, Kans., had to go to court and go through a long court process, and finally we had to have special legislation passed in the State to compel the board of trade to permit them to operate on that grain exchange which, by the way, is one of the largest cash grain markets in the State, Hutchinson.

We found that there was resistance everywhere, and even when they did permit the farm organization to have membership on the board of trade, still they didn't give farm organizations equal rights. I don't believe you can find on any of the grain exchanges of this country a farm cooperative representative who has been given a position on the important committees of the boards of trade, regardless of the size of the volume that they handle, regardless of the number of warehouses which they might control. I don't remember that anyone has been elected to any of the responsible offices on any of these boards of trade, even though they tolerate——

Senator MCGILL. How could that be remedied by act of Congress?

Mr. VESECKY. What I am trying to get at is that we want some association or some organization or some commission, if we are not permitted to become officers or have important positions on these committees to help run these committees, some friendly governmental agency to look out for our interests and see that we are not discriminated against, that we are given a fair deal, and that whenever anything comes up between the cooperative and the board of trade, we are not subject to these trials by the business conduct committee which one of the members of the Chicago Board of Trade himself said was worse than a court martial.

Senator MCGILL. You think the setting up of this commission, or body, or board, whatever you might call it, provided for by this bill, would remedy the situation you are now speaking of?

Mr. VESECKY. It would in part take the place of the inclusion of farmers' cooperatives on these different legislative and regulative committees of the boards of trade, from which they have been excluded up to this time.

Senator CAPPER. You take the position, as I understand it, that the farmer, the producer, has just as much of an interest in those grain markets, terminal markets as they are operated at Kansas City, Chicago, and other places, as anyone else, that they are sellers' markets as much as buyers' markets, and he should have some voice in determining what the rules of that market are going to be and what the regulations should be. Is that your idea?

Mr. VESECKY. That is correct. They are our products, after all, that are traded in. The price of everything that we raise is set by these markets. It is our income, the difference between loss and gain is made right there in those market places. I feel that the farmer, if he is not given freely the share that he ought to have in the running of these market places, because of the large interest that he has in them, ought to have at least a governmental agency to look out

for his interests, such as we are trying to set up in this bill, so that he will not be discriminated against any more than is absolutely necessary.

Senator FRAZIER. The marketing of the farmer's products and the price he gets are the most important parts of his business?

Mr. VESECKY. That is the big part of his business. That spells the difference between loss and gain, between staying in business and going out of business.

Senator NORRIS. I would like to call your attention, in view of your testimony and the testimony of others about what is permissible hedging and what is speculation, to the language on page 6, line 13. I want to read that to you. [Reading:]

For the purposes of this paragraph, bona fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity.

That is one definition of bona fide hedging. Here is another that follows, which I wish you would explain:

Or, conversely, purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such purchases are offset by sales of the same cash commodity.

Wouldn't that definition open the definition so that the cash ownership or purchase of a commodity would not be necessary? Doesn't that open the door to buying and selling in the future markets without reference to the ownership of commodities or cash sales of commodities?

Mr. VESECKY. I think this paragraph, if you will read it clear through, Senator, provides that they can buy these commodities in sufficient quantities to supply a probable need as far as they have contracts for sale of other products than that commodity. That takes care of the miller's position. The miller will sell flour for future delivery and he will go into the market and buy the future wheat to cover the sale of flour, and afterward exchange this purchase of future wheat for cash wheat whenever he buys the cash.

Senator NORRIS. Does it follow—I don't know whether it does or not; I think it does not, probably, from your testimony—that hedging, to be legal under this language and desirable under any condition, must be connected with the ownership of the product that they hedge? In other words, if you buy for future delivery a commodity with the intention of getting it in your business, like a miller, for instance, you would be allowed to protect yourself as an insurance propsition to sell the same amount for future delivery. Where does hedging come in that is proper if you go beyond that limit?

Mr. VESECKY. Well, there isn't very much proper hedging beyond that limit, Senator.

Senator NORRIS. Would there be any?

Senator MURPHY. No, there wouldn't be any.

Mr. VESECKY. It is about the limit that I can see to which proper hedging goes.

Senator NORRIS. You have stated that there would always be, in case a man had bought for delivery, more of the hedging than the value of the commodity dealt in.

Mr. VESECKY. No. Perhaps I misstated it, but I meant to state that there would be more trading in the future than there would be in actual cash commodities handled.

Senator NORRIS. Why?

Mr. VESECKY. Because every time you buy, you sell, you duplicate these, and you don't always buy. If you sell a hedge, the buyer isn't always a purchaser of a hedge you understand. He is a speculator who buys this. Sometimes when you buy to cover your future requirements, buying the future market, the seller isn't always a hedger. He may be a speculator again, so you always have more trading gain than what the actual hedging operations are. That is why this bill permits a certain amount, a reasonable amount of speculative trading.

Senator POPE. You think there should be a certain amount of speculative trading in addition to the hedging?

Mr. VESECKY. Yes, Senator, as long as we use the present marketing system.

Senator NORRIS. Whenever hedging exceeds the amount of the actual commodity, then it is undesirable and disastrous, isn't it?

Senator MURPHY. That is forbidden in the bill.

Senator NORRIS. I understand, but do you go beyond the rightful use of the hedging operations when you exceed in your hedging the actual amount of the commodity that is in existence or that you own or have purchased?

Mr. VESECKY. It is not a hedge any more then, Senator, it is a speculative trade.

Senator NORRIS. You would call that gambling?

Mr. VESECKY. You might call it gambling or speculation.

Senator NORRIS. I am not one who objects to speculation in a modified way. I think that is probably legitimate. I think, as a matter of fact, that when a man buys wheat for future delivery in a sense he is a speculator because he doesn't know what the price is going to be when the time comes, but if he buys without reference to the handling of the commodity itself, just goes in and buys and sells without reference to anything, is he a hedger then or a gambler?

Mr. VESECKY. He is not a hedger at all. He is either politely called a speculator or otherwise might be called a gambler, whichever one you want to call him.

Senator NORRIS. If that were prohibited by law, or prevented in any way, your idea is that it will have a beneficial effect upon the market generally?

Mr. VESECKY. I think if excessive speculation, excessive long lines or short lines—either one—and excessive sales and purchases on any one day are limited or prohibited, that it will have a beneficial effect on the market. It was proven several times during this last big flurry in July 1933, that it was the creation of these long lines at one time that made the bad break. At other times, the big short lines made the bad break. Either one can cause a break.

A wheat long that does not have enough margin, and something happens to the market—either deliberately or accidentally to force the market down below his possibility of margining his trades—will dump his whole line on the market, and it will demoralize the market. It is a menace. The big long line is just as much a menace

to the market as a big short line, and that is why we are asking for an impartial and disinterested Government instrumentality to look after this, one that doesn't have self-interest to consider first, one that has the interests of both the producer and consumer to consider and that can see the thing from both sides and not just from one side.

Our friends on the board of trade came here yesterday and the day before and they confessed their sins. They professed that they would never sin any more, that they have reformed, and that they are all good now, and that they should be perfectly trusted, that we should leave all of this to them and not try to place anybody over them at all. And at the same time they come and do the same thing they have been doing for years and years, objecting to everything that we farmers ask as a safeguards to our interests in the market, which, after all, should be paramount to their interests because it is our product they are dealing with and not their product, in the first place. They object to everything, practically everything, in there and claim that they can, because of their greater knowledge or experience, write a better bill than we or anybody else can write, and they proceed to rewrite the whole thing to suit themselves.

If they confessed their sins, they certainly haven't repented and they haven't done any penance, and as far as I am concerned, the farmers haven't forgiven them either. They are not absolved from their sins. [Laughter.]

Senator MURPHY. Do you read this no. 3 on page 6 as limiting what may be a legitimate hedge to contracts entered into, or do you construe it to be broader and mean anticipated sales?

Mr. VESECKY. I would construe it broader, so that a man could anticipate his sales during the year, like a miller or a manufacturer of cereals and things like that. We don't want to limit a man in his regular business, and I don't think the bill provides for that.

Senator MURPHY. There was a question about that language raised with me, as to whether or not we limited it to contracts—of course the language used the word "reasonable." That rule of reason would probably be based not merely on contracts alone, but on sales of the prior year as a criterion for the current year. Of course, that would affect this situation. Sales of flour, for instance, last year—I have no idea what they were, but let us say 10 million barrels. In anticipation of a foreign war resulting in a great stimulus to sales, export sales might create a situation in which this miller would want to expand his operations, increase his production very largely. He hadn't had that production in prior years because there was no war, and yet he wanted to assume that the development of war would give him a larger market.

It is your thought, is it, or isn't it, that in those circumstances, in anticipation of those increased export sales, this commission would view a hedge line in excess of past sales as a legitimate increase?

Mr. VESECKY. I believe as the commission is constituted, they can use judgment. There is no limit set to their judgment, as to what they can consider a legitimate hedge, because they have to consider what they think that man will sell. That is not the only instance. Perhaps a man is expanding, a mill might be built and start expanding business, and last year's sales would be no criterion of next year's sales because of the expanded business. This commission would have the right and authority to take that into consideration.

While, as a matter of fact, in the case of war or prospective war, I don't think it would be a good national policy to permit this kind of anticipation by anyone to raise the prices abnormally high or make an abnormal shortage for other folks that might not make the same anticipation. I am not sure but what it would be a bad practice to permit that, and this Government commission that we are trying to institute would see to it that the interests of the common folks in this country would be safeguarded.

Senator MURPHY. Proceed.

Mr. VESECKY. That is all I have to say.

Senator MURPHY. Thank you very, very much. Yours is a very helpful contribution.

Mr. GOLDSMITH. The next section of the act upon which we desire to comment briefly, and I shall undertake to discuss it very briefly, is on page 10, subsection 2 of section 4D, which, in our judgment, is one of the most important provisions of the bill, both for the protection of the bill, and more particularly for the person who deals in the futures market either by way of hedging or by way of being a student, as someone called it, of market conditions and speculating.

That section, as amended in the letter of the Secretary of Agriculture to Senator Smith, provides in effect that customers' margin moneys cannot be used as working capital by the broker but must be kept separate from his own funds, so he can't use them as working capital or speculating for or against the customer.

Senator POPE. As the bill now stands it does not prohibit the mixing of the deposits with his own money?

Mr. GOLDSMITH. That is correct, Senator. For the benefit of the committee I might call attention to the changes which the Secretary proposes: In line 20, after the word "person", insert a comma, simply by way of clarification. In line 23, the fourth word, take out the word "not" and insert "be separately accounted for and shall not be commingled with the funds of such commission merchant nor—."

Then after the "*Provided, however,*" there is new language which is contained in the letter, copies of which I placed before you gentlemen at the hearings yesterday.

Senator POPE. The main point of the amendment of the Secretary is to do the thing we suggested, to definitely prohibit the mixing of the margin deposits with the money of the commission merchant?

Mr. GOLDSMITH. That is right. The whole theory is that if a person wants to put his money on deposit where it can be used generally it should be on deposit with a bank which is under either State or Federal regulation. There are certain safeguards by way of insurance that you gentlemen in Congress have provided within the last several years; and a person who either speculates or hedges in the futures market ought not to be required to take two risks, one the risk of having guessed the trade wrong, and the other the risk that the broker might use the margin money in his own operations and lose it.

We have seen examples of that, Senator. One of the witnesses against this provision said that they had discussed the matter with leading banks in Chicago, who said that the provision was impractical. I might state that the law firm of which I happen to be a member

represents one of the two largest banks in Chicago—without mentioning the name for this record—and as representing that bank I have been in this unfortunate Rosenbaum Grain Corporation situation. I was called in in 1933 to the Ettinger and Brand situation, where there was a problem after the bust-up of cooperating with the Chicago Board of Trade and the New York Stock Exchange, so that orderly marketing might be restored. In each case we have discovered that one of the things that leads to these unfortunate failures, or prevents them from occurring earlier when they would do less harm, is the fact that the broker uses customers' margin money.

Before Judge Holley, in the Federal district court in Chicago, the record will show that in a hearing as to why Rosenbaum Grain Corporation sought voluntary 77-B proceedings when it did, it was stated that margin requirements had been raised by the Secretary of Agriculture; that therefore Rosenbaum Grain Corporation found itself without sufficient working capital and had to seek 77-B. In other words, they were deprived of part of the customers' money that they had used in the past.

As to the practical workings of this proposal, it was suggested that the customer would not be safeguarded by these provisions because no bank would recognize that these were trust funds and would insist on its right of set-off as against the failing broker. In other words, when the broker put the money in the bank, designating it as trustee funds, nevertheless the bank would assert the right of set-off.

I think it is obvious to you gentlemen who are lawyers that if Irving Goldsmith owes a bank money and has a separate account as trustee for somebody, the bank is on notice and can't use that money, just as a matter of law. Further than that, if we really want this provision, it would be perfectly simple to have an agreement with the bank with whom the money was deposited, that the bank will not assert its right of set-off. I know of no restriction, constitutional or otherwise—we have heard considerable as to the Constitution on this measure—which prevents a bank from making an agreement in accepting a deposit that it will not exercise the right of set-off.

This discussion of protecting customers' margin moneys is not a new one. We had it up 2 years ago when we discussed the Jones bill. At that time it was deemed impractical and undesirable. We had it up at the code hearings last June to which I referred yesterday. At that time many of the brokers said they agreed with it in principle but that certain features were unworkable. They pointed out that it might be necessary for them to concentrate their funds in certain banks rather than to choose banks all over the country, and that, after all, brokers were probably safer depositaries than many of the banks.

Each time we have found some countersuggestion, certain interests on the Chicago Board of Trade suggested certain improvement in margin requirements by which a broker would be required to deposit with the clearing corporation sufficient of his margins to margin his dominant position, whether short or long. A committee was formed on the board of trade, whether informally or otherwise, and reported that the thing was probably illegal under existing rules, and, in any event, was unworkable. So to this day we have nothing except discussion by way of substantial improvement in the situation.

The witness for the Chicago Board of Trade who addressed himself to this provision said that everybody agreed with the spirit of the thing, but that they wanted to make it practical. He introduced a proposed new section for 4d (2) which I believe was circulated to members of the committee and which I had the opportunity of examining last evening, which I submit—perhaps there is no intention—doesn't come within a thousand miles of accomplishing the purpose of protecting the customers' margin money.

Further than that, again getting back to the Constitution, I think it would render the particular measure entirely unconstitutional beyond any question of doubt.

Briefly, the substitute provision would provide that current assets designated as certain securities, cash, and what not, must exceed current liabilities of any particular broker, for him to engage in taking future trades. But it goes further than grain trades, which have been stated in the *Olsen case* to be in interstate commerce; it would provide that he must keep these current assets in his own possession, of course, in an amount exceeding his current liabilities, not only including grain commitments for margin money, and so forth but any commitments he might have in any part of his business.

So, if we find the same broker taking grain trades which are in interstate commerce and also dealing in whatever commodity or making whatever kind of trades that are clearly in intrastate commerce, Congress, by enacting this provision, as I see it, and respectfully submit, would be subjecting all of his intrastate transactions, which might be 99 percent of his business, to certain restrictions as in relation to current assets and current liabilities. Thereby, in the regulation of intrastate commerce, it would be regulating matters in which it has absolutely no concern whatever.

Further, it was testified yesterday by one of the gentlemen speaking for the Chicago Board of Trade that the Rosenbaum failure, or, rather, the fact that the Board of Trade didn't discover the Rosenbaum failure sooner, was due to the fact that Rosenbaum Grain Corporation had filed fraudulent balance sheets certified by public accountants with the finance committee or whatever committee it may be of the Chicago Board of Trade. I see nothing in the four corners of this proposed change which would prevent a broker from filing like false statements with the board of trade or with banks or with the public, showing that his current assets as here enumerated were greater than his current liabilities.

If this committee and the Senate of the United States agree with the House that there should be a protection on customers' margin money, let us have it; but let us not have anything of this sort which doesn't grant the protection, this proposed amendment, and may seriously jeopardize the whole bill by introducing ambiguous, vague, and possibly unconstitutional features, which are presented not at the beginning of our discussion, not during the 3 years this problem has been under discussion; but are presented in this hearing, when the bill is on the calendar of the Senate and a vote is anticipated, as a solution for the whole problem.

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That is all I have to state on the subject.

Senator MURPHY. Will you enlighten the committee as to whether or not the Securities and Exchange Commission has imposed any conditions on traders in the New York Stock Exchange with respect to marginal trades, the segregation of margin deposits?

Mr. GOLDSMITH. I believe they have, Mr. Chairman, but I shouldn't want to attempt to answer that without having the law and regulations before me.

Senator MURPHY. Do you know why that wouldn't be a safe criterion for this committee?

Mr. GOLDSMITH. I should want, Mr. Chairman, to study the reports of the Securities and Exchange Commission on that subject, the dates, the hearings on that legislation, the problems which the Securities and Exchange Commission have found themselves facing, and try to compare them to the problems on the grain exchanges; before I should answer that we should follow what the Securities and Exchange Act does in that regard.

Senator NORRIS. As I understand this proposed amendment it would in effect provide that the broker in his account with the bank should have sufficient assets of his own so that there wouldn't be any excuse or reason for the bank using any of that money to offset any indebtedness that the broker might have to the bank on any deal that hadn't anything to do with the hedger's money of which he had control.

Mr. GOLDSMITH. I don't understand, Senator, to answer your question, that he needs to have securities with a bank. He must either have cash on hand in his own vault or money in the bank, or securities as defined, of various types, or stock in a clearing corporation, or stocks that are listed on a national scale; and then there is a reference which isn't clear to me. The reference follows:

> Such securities issued or guaranted by corporations in which the United States has a direct or indirect interest, as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors.

Senator SCHWELLENBACH. Isn't there another fatal defect in the fact that you can't have an appraisal of those securities? You have an indefinite valuation on that great list of securities. On the one side, their records might disclose that the current assets exceeded the current liabilities by their valuation of the securities and, on the other side, there might be a dispute as to whether a liability was a current liability or was some sort of deferred liability.

Mr. GOLDSMITH. That is correct, Senator, and in amplification of an answer to your question, the designation of securities which have been exempted by the Secretary of the Treasury as necessary and appropriate in the public interest might mean, for example, that a cooperative association is held to be exempt from income tax, and I assume that securities in a cooperative might be considered current assets for that purpose, which I don't think the board of trade would want.

Senator MURPHY. I think it has been testified to here that in drafting that particular language they followed the language of the Securities Act.

Mr. GOLDSMITH. There is no reference to the act.

Senator MURPHY. I know that, but it was testified to that that is the language of the Securities Act.

Mr. GOLDSMITH. I want to point out for the record that there are acts under which the Secretary of the Treasury can exempt corporations for one purpose or another and clearly, if the amendment were otherwise acceptable, reference should be made to the appropriate act.

Senator NORRIS. Senator Murphy, in referring to your understanding, I think they claimed the language was the same as provided for in the Securities Act, that having been elicited in answering a question I propounded as to the simplification of the amendment.

Senator MURPHY. You may proceed, Mr. Goldsmith.

Mr. GOLDSMITH. At this time, Mr. Chairman, the proponents of the bill, otherwise than members of the official departments here in Washington, would like to stop their interpretation in order to afford an opportunity to members of the Grain Futures Administration to discuss this bill. Obviously, the Grain Futures Administration represents the Government and the only alliance between the group for whom I speak and the Grain Futures Administration is our common cause in believing that this bill should be enacted.

Senator POPE. Let me ask this question: Are there other commodities than butter and eggs where there is a considerable demand that they be included in this bill? I have had several people speak to me about other commodities.

Mr. GOLDSMITH. I can't answer that, Senator, except by saying that yesterday Mr. O'Neal, the president of the American Farm Bureau Federation, in his testimony before this committee, indicated that his farm organization and organizations affiliated with the Farm Bureau have indicated a very strong desire that the other commodities in which they trade be included in this bill. That was largely for the reason that if one commodity exchange is regulated, the speculators may move to some other commodity exchange.

I might say, Mr. Chairman, that since we must conclude today, and we have 10 or 12 more witnesses, Mr. Mehl has kindly agreed that he will present his testimony at this time on behalf of the Grain Futures Administration. It is expected that this will take about an hour—and, of course, he will answer any questions of the committee—and then we may adjourn, and then we will present at the afternoon session some 10 or 12 witnesses who have come here, some of them from distant places, to give their views to this committee.

STATEMENTS OF DR. J. W. T. DUVEL, CHIEF; J. M. MEHL, ASSISTANT CHIEF; AND RODGER R. KAUFFMAN, ASSISTANT CHIEF INVESTIGATOR, GRAIN FUTURES ADMINISTRATION, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

STATEMENT OF J. M. MEHL

Mr. MEHL. If it be in order, Mr. Chairman, I respectfully request permission to refer to Dr. Duvel and other members of our staff certain questions and matters with which they may be more familiar. We don't want to tax Dr. Duvel too much, but I know the committee will wish to hear from him.

Senator MURPHY. Certainly. Proceed.

Mr. MEHL. We have not considered it necessary at this hearing to present any testimony in general support of the bill H. R. 6772. We have rather assumed that the question of whether the legislation is desirable and necessary was settled, so far as this committee is concerned, when the bill was reported favorably and placed on the Senate calendar. We understand that the exchange representatives desired this hearing in order to try to obtain committee support for certain modifications which they felt would improve the bill from the standpoint of practicability and workability. We should have been very glad to cooperate in such a program, but from their testimony we suspect—and you will recall that one of their witnesses suggested that we were suspicious of everyone—we suspect that they have sought here to do something more than just clarify language and improve the bill in its application to their practical problems.

Their position, as we understand it today; is exactly what it has been in the past, namely, that no legislation is necessary. While that is the majority viewpoint, there are many members of the exchanges, I am sure, who would welcome this legislation, but they know that they would not be very popular back home if they came to Washington and advocated it.

I think Senator Norris will concede that majorities may be wrong. [Laughter.]

Senator NORRIS. I have found that they are awfully aggressive lots of times.

Mr. MEHL. Dr. Duvel and we in the Grain Futures Administration freely admit that millers and commission merchants know more about their problems than we could possibly know, and we are not denying that if they would set their minds to it they could improve this bill materially. However, we would have more confidence in what they suggest if they stood ready to accept the legislation with the changes which they have requested.

This bill has been given very careful consideration by the House Committee on Agriculture. The Solicitor and the lawyers of the Department of Agriculture believe that the provisions of the bill are constitutional and sound legally. The House Committee on Agriculture had the benefit of the draftsmanship and the expert knowledge regarding constitutional questions which its legislative counsel could give it. We believe that the bill in its present form is a pretty good bill and will accomplish the purposes that it is intended to accomplish. It can be improved, of course, but that is true of practically every law that is on the statute books today. It is impossible to write into any law language so clear that every question arising in the future can be anticipated and resolved and settled in advance. Moreover, when we try to do so, we frequently find that the law has been narrowed so as to become useless in application to new situations which could not be anticipated.

Senator POPE. What do you mean when you say "the bill in its present form"?

Mr. MEHL. I mean the bill H. R. 6772, with the amendments suggested in the letter of the Secretary of Agriculture to the Senate Committee on Agriculture of June 27, 1935.

It was said at the outset of this hearing that the state of the markets during the past 2 years in itself indicated that here was no need for legislation. We must admit that there has been no serious market disturbance since July 1933, but we believe that there are several reasons for this other than those that have been here suggested. In the first place, the small speculators that were in the market at that time lost everything they had; in other words, they lost their stake, and it is common knowledge on the street that after a market crash of that kind it takes about 2 years to grow another crop of speculators. [Laughter.]

Senator MURPHY. You insist upon the word "speculators" there?

Mr. MEHL. Yes, I do, Senator Murphy; for the purpose of this discussion at least. It is barely possible, also, that the fact that this bill or one like it has been pending before Congress practically all of that period has in itself had a healthy influence and has had some effect in confining the market within reasonable bounds.

Senator MURPHY. Would you or would you not relate it to the loans on commodities as made by the Government?

Mr. MEHL. Oh, yes; there were many factors involved in the market during the past 2 years.

It was suggested that there were no large speculators in the market during this period. That is true, and is, perhaps, another reason why there have been no serious disturbances. There have been very few occasions during the past year when any speculator in Chicago wheat futures has had more than 2,000,000 bushels long or short at any one time. However, that, to our mind, is a practical demonstration that a permanent limitation of some such figure might be a permanent cure for these conditions and might tend to prevent recurring market disturbances such as we had in 1933. If the mills and elevators have been able to hedge and have not been hampered in their operations during the past 2 years because of the absence from the market of large speculators, we think it reasonable to suppose that they can get along without them in future years. There will be years, of course, when more grain is produced than has been produced during the past 2 years and when there will be a larger volume of hedging sales to be absorbed, but our conclusion, based on 12 years of observation, is that by prohibiting excessively large speculative lines and removing the hazard of market manipulation and collapse by the sudden liquidation of large lines the smaller speculators may have a chance to make some money sometimes instead of always losing it, and as a result there will be a more certain and constant flow of trading, which will more than make up for the temporary loss of volume in certain years or during certain periods when a few large speculators are swelling the volume by their sometimes harmful operations.

With respect to the proposal submitted by exchange representatives relating to a 20-percent margin requirement on speculative lines as a means of control, we would have no particular objection to that whole amendment as an additional or perhaps even an alternative provision in the bill, but we do object to it as a substitute.

Senator MURPHY. That is with reference to what provision?

Mr. MEHL. The margin proposal which would require a 20-percent margin on speculative lines in excess of 2,000,000 bushels. We do object to that proposition as a substitute for a fixed limitation upon speculative lines as authorized in section 4a of the bill. Indeed, we think that the proposal of the exchanges for a 20-percent margin on speculative lines in excess of 2,000,000 bushels in the case of grain

is in itself an argument for limitations. There can be only one purpose in a 20-percent marginal requirement on speculative lines in excess of 2,000,000 bushels, and that is to prevent such lines. If that be the purpose, there should be no objection to a limit, which can be fixed definitely and with certainty. The only difficulty in that regard is that it is impractical, we think, by law to fix a stated speculative limit applying to all commodities in all markets under all circumstances.

Take the 20-percent margin requirement suggested and assume a suggested limit of 2,000,000 bushels; assume that it is proper for a large market, such as the Chicago Board of Trade, it doesn't follow that a 2,000,000-bushel limit on a speculative line would be proper in smaller markets, such as Minneapolis, Kansas City, or, to take an extreme case, the still smaller markets on the Pacific coast. You realize, of course, that 86 percent at least of all the trading in grain for future delivery in the United States takes place on the Chicago Board of Trade.

Senator McGill. What percent?

Mr. Mehl. Eighty-six percent. Moreover, we think that the 20-percent limit cannot be effective and cannot operate fairly with respect to all persons. Even with wheat at $1 per bushel a wealthy speculator could carry a large line with a margin representing just one-fifth of the price. Most speculators who have ever gotten more than 2,000,000 bushels in any one future at any one time are wealthy, and this is important in our opinion—well, on the average, there are less than eight men in the entire United States that during the course of a year have a speculative position of more than 2,000,000 bushels at any one time.

Senator Murphy. If you will pause there a moment, please, do you think it has to be left in the discretion of this Commission to fix a limitation as to each market because the 2,000,000 limitation in the case of Chicago might not be a regulation that would fit San Francisco?

Mr. Mehl. That is correct.

Senator Murphy. The punitive commission of 20 percent on excess lines would operate the same, however, in San Francisco as it would in Chicago, wouldn't it?

Mr. Mehl. Oh, yes; certainly.

Senator Murphy. Your advocacy is of a prohibition in excess of a given amount of trading as fixed by the Commission?

Mr. Mehl. We think if there is any justification for a limit it ought to be definitely fixed and ought to operate fairly as to all persons at all times.

Senator Murphy. You think in the last analysis it wouldn't repress the big operator at all because he would be an operator with larger resources; is that it?

Mr. Mehl. Yes; these large speculators operate not only in the commodity markets but in securities and various other commodities not covered by this bill—commodities such as sugar, rubber, and hides, and in many cases—well, I won't say in many cases, but in some cases certainly—they do not put up any cash margins at all. They simply deposit their securities as a basis for credit, and there is no reason to believe that such men could not find some way of

financing speculative lines in excess of 2,000,000 bushels if they thought it profitable.

We think that this problem, from its very nature, is one which must be left to the Commission. We feel strongly that section 4a must be left in the bill. Even if the 20-percent margin was a deterring factor affecting speculators in the large Chicago market, it would have absolutely no effect on excessive speculation in smaller markets where 2,000,000-bushel lines never occur. Furthermore——

Senator Murphy. It seems to me from your statement that there is nothing at all in this 20-percent proposal. It wouldn't keep lines from going over 2,000,000, because the rich man, who would be the man who would have a line in excess of 2,000,000, would be a man who could put up this higher margin.

Mr. Mehl. I do not wish to be understood as saying exactly that, because it is possible that certain large speculators might stay out of the market rather than pledge their securities in such large amounts, but to anyone who had the money or the securities, and believed he could operate with profit, I do not think it would make any difference at all.

Senator Murphy. The speculator does, doesn't he?

Mr. Mehl. Yes; that is why he is in the market.

We do not have any objection to including a margin provision in addition to what is already in the bill, but we do insist that it is not a proper substitute for section 4a.

Since 1926, I believe, the Grain Futures Administration, and practically every Secretary of Agriculture, have recommended legislation providing for limitations upon excessive short selling and speculation. Limitations may cut down the volume of trading. They will cut down speculative patronage from a certain class of speculators, but, as I stated before, these are relatively few in number, on the average less than a dozen in any one grain during any one year. We are confident that this type of patronage can be dispensed with entirely, if necessary, and if dispensed with the smaller speculators who, after all, furnish the main support for future trading and hedging will get a break once in a while and will not so frequently lose their stake in a game which is too big for them, as against a few large speculators.

Senator Murphy. What would you say to the contention that was advanced here, that that will restrict the absorptive ability of the market when ligitimate operators, these processing plants, seek to put out hedges?

Mr. Mehl. We think, Senator Murphy, based on observations of many years, that the large speculators—those who trade in amounts over 2,000,000 bushels—are an unreliable source upon which to depend for speculative support to absorb hedging sales. In the fall of 1926, I recall, one such speculator was short 10,000,000 bushels, and another at the same time was short 12,000,000 bushels of December wheat futures, at the very time—was it in September, Dr. Duvel?

Dr. Duvel. It was early in September.

Mr. Mehl. It was the very time when the crop was moving and when the market needed buying support to absorb the hedging sales from the country. Obviously, those 22,000,000 bushels, which, as I recall, comprised about 33⅓ percent of the entire open interest in

that future at the time, were added to the hedging pressure. We believe that, by and large, to the extent that speculation is necessary to provide a hedging market—and we conceded that it is—it must depend more or less upon the so-called smaller speculator, the general public.

Senator SCHWELLENBACH. Can you give us an estimate as to the extent of which losses by small speculators have occurred from market collapses due to overextension by speculation by large ones?

Mr. MEHL. I think it usually occurs from overspeculation.

Senator SCHWELLENBACH. By large operators?

Mr. MEHL. I would not say in every case, no; because there are times when the wheat market gets on the front pages of the newspapers as the result of war news or something of that sort, and you just can't keep people out of the market.

Senator SCHWELLENBACH. Is it possible for you to estimate the extent to which these overextensions by large operators have resulted in losses to small operators? Has it been a material factor?

Mr. MEHL. It has been a material factor; but I wouldn't attempt to estimate the cost.

Senator SCHWELLENBACH. If that is true, then isn't it logical to conclude that if you can prevent overextension by large operators you will to that extent encourage the operation by smaller operators, and thereby provide a more diversified speculative market than you get at the present time?

Mr. MEHL. You have stated our position exactly, Senator Schwellenbach. That is what we believe. We believe there will be a more constant and a more dependable patronage of the future market without these excessively large speculators.

Senator MURPHY. Did I understand you to testify that there have been no 2,000,000 lines in the last 3 years?

Mr. MEHL. I wouldn't say that there have not been any during the past 2 years. There have been some perhaps, but they have been comparitively few in number, and I should say in no case as much as 3,000,000.

Senator MURPHY. You would believe, then, that the processors of these commodities have had no difficulty in the last 3 years in hedging their positions?

Mr. MEHL. I suppose there are times in every market when there will be lulls in trading and when hedging orders cannot be executed at the instant. I presume this may have been true sometimes during the past 2 years, but I can say with certainty that the Grain Futures Administration has received no complaints of inability to execute hedging orders during this period.

I would not wish to say that there had not been a time when difficulty was experienced in executing a hedging order right at the moment. That is likely to occur even during normal periods of trading.

Senator MURPHY. In almost anything?

Mr. MEHL. Yes.

Of course, we recognize that there are many men in the trade who honestly believe that the futures market and speculation in futures will die a natural death unless we can have a few large speculative leaders in the market. And by leaders is meant men of wealth and speculative genius who are able by the force of their own trading

at times to put wheat on the front pages of the newspapers and thereby attract a following on the part of smaller traders. If that be true, it seems all the more reason to us why, on moral principles if not economic, a check should be put on such practices.

We believe that the futures markets, and the very natural speculative interest which these markets will always attract, may serve useful purposes in providing hedging protection, in aiding in the economical marketing of grain and in causing intelligent price opinion to focus in a central market place. But if future trading is to be justified from the standpoint only of collecting commissions is to be looked upon from the gambling standpoint of trying merely to get as large a play as possible, without regard to who is hurt and without regard to the effect these operations have on prices, we think there is only one ultimate solution of the problem and I need not suggest what the answer will be.

The Grain Futures Administration would like to see if this speculative force cannot be held in check—be regulated—because it does serve a rather useful purpose in furnishing hedging protection in the present system of grain markets.

Senator MURPHY. Have futures an effect on cash values?

Mr. MEHL. Oh, yes; certainly.

Senator MURPHY. A very considerable effect?

Mr. MEHL. We think future trading has an all-important effect upon prices. It is the medium through which price opinion regarding any commodity expresses itself in the organized exchanges.

Senator MURPHY. Would you say, then, that with crop conditions in the Southwest such as they are, and speculative purchases of wheat expected to put the price of wheat up, that will in turn be reflected on cash wheat prices today?

Mr. MEHL. Yes, sir.

Senator MURPHY. So that that speculation does raise the price and give the benefit now to the man who has the grain, or the wheat, rather?

Mr. MEHL. Yes.

Senator SCHWELLENBACH. Do you have any history of the effect upon legitimate or the opportunity for legitimate hedging immediately after one of these collapses which comes as a result of overextension? Do you have any history showing that they have difficulty and have had difficulty immediately after a collapse?

Mr. MEHL. I cannot give you a specific instance of any hedger who had that difficulty, but I am sure that the representatives of the grain exchanges will admit that immediately following the situation in 1933, and practically up to the present time the market has been exceedingly thin. The volume of trading has been small. During the last 4 months it has been very much smaller than during any similar previous period.

Senator SCHWELLENBACH. So if you could prevent these market collapses as a result of extension by larger operators you would stabilize over a period of years the opportunity for legitimate hedging?

Mr. MEHL. We think so, Senator.

Senator MURPHY. Do you think the factors now in the present condition due to the drought in the Southwest are potential of a runaway market? It would be stimulated by opportunity to trade in excess of two million.

Mr. MEHL. That is the difficulty. There are always potentialities for excessive speculation. It grows up overnight; a sudden change in crop conditions may move the price up, naturally, 3 or 4 cents. We can't hope to stop that sort of thing by legislation. Prices should advance by reason of change in actual supply or demand conditions. Of course, these are going to change, and if the change be a sudden one, market prices also are going to change suddenly.

There may be times when that happens when the general public will be attracted by the possibilities of making much money, and by getting into the market will build up a speculative market which has all of the potentialities for a crash and a price debacle such as we had in 1933.

I wish next to direct attention for a moment to the question of registration of floor brokers. Mr. Coughlin, who is president of the Floor Brokers Association of the Chicago Board of Trade, appeared in opposition to the registration of floor brokers. He said—and I want to be sure that I quote him correctly. He said that the floor broker is merely an agent for an undisclosed principal. If that statement were true, we would readily agree with Mr. Coughlin that it is entirely unnecessary to register floor brokers. But Mr. Coughlin failed to tell the committee—and I would not say that he intentionally omitted to do so—that while these floor brokers are engaged in executing orders for others as agents, they are at the same time trading in futures, and speculating for their own personal account. They have a perfect right to do so under the rules of the Chicago Board of Trade.

One witness, as I recall, expressed fear that the activities of floor brokers and scalpers would be greatly hampered if the commission named in this bill should fix a limit on the amount of speculative trading that might be done in 1 day, say, 2,000,000 bushels. Obviously, if a broker finds time to speculate and trade for his own account to the extent of 2,000,000 bushels in a single day, he is doing something more than merely acting as agent for an undisclosed principal. Now, if Mr. Coughlin, as president of the Floor Brokers Association, would come forward and in behalf of those brokers agree to a provision in this bill which would confine their activities to what he represented was their sole function, to act as agent for undisclosed principals; if they would agree to be either fish or fowl and not try to be both, we would very gladly concur in the recommendation to strike out the provision requiring floor brokers to be registered. I am not suggesting that this be done, although I think such separation of function would be well justified both as a matter of law and as a matter of moral and ethical conduct. One should not have a personal interest in subject matter regarding which he holds himself out to others as being a disinterested and independent agent.

Senator MURPHY. Do I understand then that it would be possible for this floor broker, if I put in an order and didn't put in a specified price, to buy 10,000 bushels of wheat at the market, and in executing my order sell that wheat to me at the price that he determines?

Mr. MEHL. No; what I meant to say, Senator, although that has been done, not in such large quantities, perhaps, but what I meant to say was that at the same time that he is acting in the wheat pit in executing orders that come to him from commission merchants——

Senator MURPHY (interposing). My order has come to him from a commission merchant.

Mr. MEHL (continuing). He is at the same time trading with other people in the pit for his own personal account.

Senator MURPHY. All right, why wouldn't he trade with me, according to that statement? Why wouldn't he supply my order? I send it in to Frazier-Jelke or some other Chicago house and they send it down to him as one of the pit traders to buy 10,000 bushels of wheat, and the price is not stated. Now, he can sell that wheat to me?

Mr. MEHL. It has been done and is being done, and this bill is intended to stop that by prohibiting him from taking such orders into his own account. I don't mean to say that this is authorized by the rules of the board of trade. It is not.

Senator MURPHY. Well, that is the inference I drew from what you said, and I want to be corrected if I am wrong.

Mr. MEHL. I am sorry if I gave that impression. I merely meant to say this, that under the rules of the exchange a floor broker may act in a dual capacity; that is, he may act as agent in executing these orders by bona-fide transactions with others, but in the meantime he is free to trade with other brokers in the pit for his own account.

Senator MURPHY. With other brokers?

Mr. MEHL. That is right.

Senator MURPHY. Not with customers of some other concern?

Mr. MEHL. No.

Senator MURPHY. Or the customer of this same house?

Mr. MEHL. No sir.

Senator MURPHY. But with other brokers?

Mr. MEHL. Yes; I don't want to be understood as suggesting to this committee, which is convened at the special request of the grain exchanges, that this separation of functions should be made by law now, but I do think the committee is entitled to correct information from a man who himself is a floor broker and knows better than anyone else that such floor brokers do act in a dual capacity—namely, that they execute orders for commission firms in the pit and that at the same time they have a personal interest in the market and do trade and also scalp, as was testified here, for profits of an eighth or a quarter of a cent per bushel.

The argument has been advanced that the floor brokers do not need to be registered because they have no dealings with the public, that they are a special class of board of trade members operating in the pit in executing orders for others. That is all very true, but we must not lose sight of the fact that every order, whether it comes from Topeka, Kans., or Shanghai, China, hedging as well as speculative orders, have got to pass through the bottle neck of the floor broker who is the man who executes these orders by purchase and sale with other brokers in the pit or trading place provided on the exchange floor. So that, while the floor broker does not have direct contact with the public, his activities do very materially affect the interests of those who have orders flowing into the wheat market.

Senator MURPHY. Well, what is accomplished by his registration?

Mr. MEHL. I hope to get to that, and then I will conclude my discussion of the registration provision.

As I said before, if these floor brokers were trading exclusively for their own personal account, or were engaged exclusively in executing orders for others, we would agree that registration could be dispensed with. But we have observed many instances wherein floor brokers executing orders for customers have, by cross trading and other means, managed to take these orders into their own personal account on the books of some third party at prices fixed by themselves, and in these circumstances we feel that it is rather necessary to know with what commission firms these brokers have their personal accounts, and that the registration requirement is necessary to enable us to know at all times exactly what members in the various pits are engaged in executing orders for others. There are floor traders, scalpers, who do trade exclusively for their own account, and they do not handle customer orders, and so far as this bill is concerned they are not affected; they will not be required to register.

Senator MURPHY. It surprises me that a reputable house on the board of trade would do business with a floor trader under circumstances where it felt that its client was paying more or received less by reason of the trader himself dealing with himself or with some third party.

Mr. MEHL. I think I can give you some definite information based on a case in just a few minutes which will show you what we are driving at, but in the meantime—and I hope the Senators present will not get excited over that point, because I did not raise it for that purpose and would not have raised it at all excepting for Mr. Coughlin's testimony, which I thought was erroneous and should be corrected—I would urge that that separation of function be not done at the present time. There is another side to that question.

Senator MURPHY. Yes; as it stands, it looks like a racket. [Laughter.]

Mr. MEHL. Yes; there is another side, and many practical men who are operating in the pits and who never engage in this sort of thing feel that it is an advantage, perhaps, at times to let floor brokers trade in that way, because it is not so apparent for whom they are trading.

Senator MURPHY. I thought there would be the other side, because I just can't conceive of all these firms on the Chicago Board of Trade being so very unethical and so lacking in standards of integrity and fair dealing with their clients.

Mr. MEHL. I think the committee would be interested to know that in the 1934 hearings before the House Committee on Agriculture on this particular point, a former president of the Chicago Board of Trade, Samuel P. Arnot, a man who was such president for many years, and still has, I know, a real affection and regard for that institution, came voluntarily before the House committee and recommended "that brokers executing orders in future contracts for others be licensed under the act the same as commission houses, instead of being subject to penal action as now provided in the bill." This appears on page 245 of the House hearings on H. R. 8829 in April 1934. In other words—and it was out of sympathy for the floor brokers and their problems, which he knows perhaps as well as any man living—he suggested registration in lieu of the more severe penal provisions which were in the bill being considered at that time. That is all I have to say on registration.

Now, Mr. Coughlin referred to a case in which he defended three floor brokers on the Chicago Board of Trade against charges filed by the Secretary of Agriculture in 1930, and which he stated resulted in a complete vindication of his clients after a hearing involving 2,000 pages of testimony and costing the Government, so he said, $5,000. Incidentally, one of the respondents in that case admitted to one of our accountants that he had cross-traded with the other respondents and taken customers' orders into his own account, and we fully expected that this respondent, when the case came on for hearing, would come forward and make the same admission that he made to our accountants, and if he had done so the record as to him would have been very short and not at all costly; however, all of the respondents were defended so ably that the hearing did consume much time and filled many pages of testimony.

I would like to read from the opinion and the order of the Commission in that case and let the Senators judge for themselves the extent of the respondent's vindication by the Commission. I am reading now from the opinion and order of the Commission in that case, consisting of the Secretary of Agriculture, Secretary of Commerce, and the Attorney General. On the charge of manipulation it was said:

> The evidence indicates that respondents William B. Massey and John S. Reddy, while acting as pit brokers for their principals, Lamson Bros. & Co., E. J. Feehery & Co., and James E. Bennett & Co., were entrusted with certain orders for the purchase and sale of wheat for future delivery on and subject to the rules of the Chicago Board of Trade for the account of customers of such principals; that instead of executing these orders by bona-fide purchase and sale transactions with other members of the Chicago Board of Trade, as they were required to do under board of trade rules, the took these orders into their own personal accounts on the books of the third respondent, Philip J. Reddy, at prices determined and fixed by themselves; that these prices were fixed and determined so that, with possibly one exception, they were within the range of prices in effect some time during the period that the orders were in their possession for execution, but that the prices thus fixed on the buying orders of customers (and which to respondents Massey and John S. Reddy became sales) were higher by amounts varying from one-fourth to 2 cents per bushel than the prices fixed on selling orders of customers handled in the same way at the same time.

Counsel for the Government in that case, in trying to make a case under the present authority of the Grain Futures Act to outlaw and stop that sort of thing, built their case on the theory that this was manipulation. They knew, of course, that it was not manipulation of the market in any broad sense as affecting prices generally, but they thought possibly they might be able to sustain a charge under the law that these deductions from the prices which the customers otherwise would have received were, in effect, as to those customers, a manipulation of the market price.

Senator MURPHY. Pardon me, was there any denial in that case of the facts alleged?

Mr. MEHL. I'll say there was, 2,000 pages of it.

Senator MURPHY. Well, they refuted the contention that they had handled these order in this way?

Mr. MEHL. Oh, yes; but I think the findings of facts by the commission, which I have just read, do not very strongly suggest a vindication.

Senator MURPHY. As I understood you, it was a question of law and a question of whether there was manipulation or not.

Mr. MEHL. Yes. The Commission, in passing on the question of law involved, as to whether or not the present Grain Futures Act was adequate for that purpose, said:

> While practices of the character here involved may be detrimental to customers and may even amount to fraud, we nevertheless find difficulty in adopting the view that these constituted manipulations of the market price of grain within the meaning of the Grain Futures Act.

Senator FRAZIER. Have you got anything in this bill that will prevent transactions of that kind?

Mr. MEHL. Yes, sir. Cross trading was the means adopted in that case by which to get these customers' orders into the personal accounts of the respondents.

Senator FRAZIER. You think this gets around it?

Mr. MEHL. Under this bill cross trading is specifically prohibited as such. You do not have to prove anything more than the fact of cross trading. And furthermore, brokers are prohibited by this bill from bucketing or from taking customers' orders into their own account without prior consent of the customer.

Senator MURPHY. Well, did the court find that the facts that you alleged were proven?

Mr. MEHL. The case did not go to the court because the Commission disposed of it.

Senator MURPHY. The Commission decided that the facts alleged were proven?

Mr. MEHL. Yes; but that the law did not cover it.

Senator MURPHY. I understand. That is just what I wanted to get at. Now, you say that this was done in violation of the rules of the board of trade?

Mr. MEHL. Yes; it was.

Senator MURPHY. Did the board of trade do anything with respect to these men?

Mr. MEHL. Yes; when the Grain Futures Administration was first advised of the difficulty—it originated, I may say, on complaint of a customer in Enid, Okla. He complained first to the board of trade. It seems that the broker in executing one of these orders went outside of the established quotations on the board, and the customer, of course, wanted to know how they could execute a trade outside of the quotations, so he complained, and the Chicago Board of Trade at first, I believe—I don't want to be misquoted on this—reported to the customer that these were job lots for which there were no recorded quotations; that these sometimes varied from the recorded quotations on round lots, and that it looked all right. Then the customer complained to the Grain Futures Administration. Our supervisor at Chicago, Mr. Fitz, took the matter up with the Chicago Board of Trade and it looked into it and suspended one respondent for 5 days. Later, I believe, when it appeared that the Government and also many members of the Chicago Board of Trade were dissatisfied, he was suspended for 2 years. Don't misunderstand me as saying that this sort of thing meets the approval of any large or substantial number of Board of Trade members; of course not, but after further investigation——

Senator POPE (interposing). Was anything done with the other two? You say one of them was suspended for 5 days.

Mr. MEHL. No; nothing has ever been done with the other two. One of respondents was suspended for a period of 2 years.

Senator MURPHY. Two years?

Mr. MEHL. Yes.

Senator MURPHY. Well, they did take disciplinary action. When was this?

Mr. MEHL. This was in 1929.

Senator POPE. But no disciplinary action was taken as to the other two?

Mr. MEHL. No; so far as I know, there was never any investigation made of the transactions of the other two respondents, based on the records in the case and the transcript of testimony before a referee appointed by the Secretary of Agriculture.

Senator NORRIS. Was this disciplinary action taken as a result of the investigation by the board of trade or as the result of the investigation by the Commission?

Mr. MEHL. I think it is fair to say that when one of the respondents was suspended for 5 days, the exchange did have knowledge that complaint had been made to the Grain Futures Administration, and it did have that knowledge, of course, when it investigated further and suspended the man for 2 years.

Now, I do not like to violate an agreement not to take more than 1 hour, but there are some other things that I am very anxious to touch upon.

Senator MURPHY. I think the committee wants to hear you for its own information; is very desirous of hearing you, and desirous of having you go thoroughly into the matter. Do the other members of the committee feel that way?

Senator POPE. Yes.

Senator MURPHY. How long do you think it would take to go through it?

Senator NORRIS. I think that would depend upon us a good deal.

Mr. MEHL. You have been very kind, I am sure. What I have left I think can be disposed of more quickly than what has gone before.

Senator MURPHY. We have no objection to the time you have taken at all. I was just asking for a fair approximation to guide us in our recess.

Mr. MEHL. The next thing I hope to discuss—and I shall discuss that very briefly—I am sure I can finish in 30 minutes.

Senator POPE. Let us finish with this witness then.

Senator MURPHY. All right; go ahead.

Mr. MEHL. I think I shall have very little to say on the subject of privilege trading. The record of the exchanges themselves on that question over a period of years shows conclusively that the trade itself has never had any unanimity of opinion regarding the desirability of trading in privileges. Since 1874 there has been a law in the State of Illinois making it unlawful to deal in privileges, and I believe that as early as 1856 the board of directors of the exchange took action to the effect that such transactions should not be recognized by the arbitration committee or be considered as business transactions by the directors. In the interest of conserving time, I am going to ask the privilege of filing in the record the history of the attitude of the repre-

sentatives of grain exchanges before committees of Congress back in 1922, and the history of privilege trading from that time up to the present time. This was prepared by Dr. Duvel, and I am sure that you will find it interesting as reflecting a rather unanimous opinion on the part of grain-exchange representatives in 1922 that privileges should be abolished.

Senator NORRIS. I think you had better put that into the record.

(The paper referred to follows:)

INDEMNITIES

(Excerpt from letter containing unanimous report of the Board of Directors of the Chicago Board of Trade, April 12, 1921, to Mr. J. P. Griffin, president, Chicago Board of Trade, appearing on pp. 151, 152, and 153 of the report of hearings on Future Trading, Committee on Agriculture, House of Representatives, 67th Cong. 1st sess., Apr. 28, 1921.)

CHICAGO, *April 12, 1921.*

Mr. J. P. GRIFFIN,
President, Chicago Board of Trade

Your board of directors has given careful and earnest consideration to your letter of February 28, summing up certain alleged trade abuses complained of by legislators and others, something which has been discussed by the directors in official session and informally, for some time past, and we beg leave to submit the following report and recommendation: * * *

We do find some trade customs of which advantage could be taken by those intent upon overspeculation. They are herewith enumerated and as soon as possible the officers and directors of this exchange will bend their best efforts toward the discontinuation of the practices mentioned.

The trade methods referred to are as follows:

Deferred acceptance contracts, which are better known as indemnity transactions, which can be made use of for excessive and spectacular trading.

Extending of credit by commission houses to clients whose transactions are for other than hedging purposes.

It is our firm purpose to prevail upon our membership to so amend our rules as to preclude all transactions in indemnity contracts and at the same time induce other exchanges to follow the same course.

While these contracts at times serve a very useful economic function, nevertheless they are frequently used as a medium of entering the market on a large scale. We have concluded that this latter fact outweighs all of their advantages and it has led to our conclusion that they should be abolished. We propose to enact rules and regulations which will give our officers proper jurisdiction over spectacular activities of our members. Further, we shall urge an amendment to our rule prohibiting the extending of credit for purely speculative purposes.

The following were directors of the Board of Trade of the City of Chicago at the time the foregoing report and recommendation was made: L. C. Brosseau, J. J. Bagley, J. W. McCulloh, J. F. Lamy, K. P. Edwards, Joe Simons, W. E. Hudson, E. D. McDougal, E. A. Doern, L. L. Winters, C. H. Stone, D. H. Lipsey, A. M. Clement, F. S. Lewis, J. C Murray

(Excerpt from the testimony of Mr. Joseph P. Griffin, president of the Chicago Board of Trade, before the Committee on Agriculture, House of Representatives, 67th Cong., 1st sess., Apr. 28, 1921 (pp. 156–157, and 159–160), Hearings, Future Trading:)

Mr. TINCHER. Your rule enforced in the Chicago Board of Trade would not prevent the men in Kansas City or St. Louis from indulging in puts and calls; you have no way of forcing them?

Mr. GRIFFIN. None, whatever. I may say that following the publishing of the report of our directors all of the principal grain exchanges in the country held a meeting—I was not personally present—and they unanimously indorsed the recommendation of our board and agreed in their turn, as soon as may be, to make such amendments to their rules as to make this recommendation operative.

Mr. TINCHER. Of course, there is need for a law on the subject, because there will always be some outfit of people trying to profit.

Mr. GRIFFIN. Mr. Congressmen, I think I speak not only for the Chicago Board of Trade, but for all other exchanges, when I say that we have no objection to a law of that kind, and clearly so, when your bill is simply a vindication of our own judgment. * * *

Mr. GRIFFIN. * * * If I may, we will proceed to the consideration of section 3. Section 3 is the subject matter which I have already discussed; in other words, indemnity transactions. As you have observed from the reading of the report of our board of directors, we have already decided to abolish indemnity transactions, and the action of our board has received the concurrence of other grain exchanges. I should like to say that frequently our exchange has abolished trading in these indemnity transactions. I recall about 15 years ago that the Chicago Board of Trade revoked the rule, and the trading in these transactions was then transferred to Milwaukee. The result was that Milwaukee, which was a comparatively unknown futures market, as a result of the Chicago market forbidding these transactions, at once enjoyed a trade of huge proportions. We feel that these transactions do permit persons to overspeculate; and as I have already touched that question, I will dismiss section 3 by saying that we agree with the bill.

With reference to trading in puts and calls (privileges), Mr. Julius H. Barnes, president of the United States Grain Corporation and wheat director during the World War, member of the Chicago Board of Trade, Minneapolis Chamber of Commerce, and Duluth Board of Trade, said before the United States Senate Committee on Agriculture and Forestry, Sixty-seventh Congress, first session, May 31, 1921 (p. 84, Hearings, Future Trading in Grain):

"Broadly speaking, the act provides these things:

"To tax privilege trading out of existence. With this end, the general sentiment of the national trades will agree. The exchanges have already expressed themselves as against the practice of trading in privileges, and will, I am confident, without legislation, eliminate this immediately."

Mr. B. L. Hargis, president of the Kansas City Board of Trade, in a statement before the Senate Committee on Agriculture and Forestry (p. 278, Hearings, Future Trading in Grain, 67th Cong., 1st sess.), June 3, 1921, advocated the elimination of trading in puts and calls. The following is an excerpt from his testimony:

The CHAIRMAN. What would you say about eliminating puts and calls?

Mr. HARGIS. Oh, by all means.

The CHAIRMAN. It ought to be eliminated?

Mr. HARGIS. Yes.

(Excerpt from statement of Mr. G. F. Ewe, representing Minneapolis Chamber of Commerce, before the Committee on Agriculture, House of Representatives, 67th Cong., 1st sess., p. 205, Hearings, Future Trading, Apr. 28, 1921:)

Mr. EWE. * * * If the elimination of the indemnities is in your judgment wise, we are heartily in accord with it.

(Excerpt from the testimony of Mr. W. H. Marshall, of the W. H. Marshall Commission Co., Kansas City, Mo., member of the Kansas City Board of Trade, before the Committee on Agriculture, House of Representatives, 67th Cong., 1st sess., pp. 253 and 254, Hearings, Future Trading, Apr. 29, 1921:)

Mr. MARSHALL. * * * For instance, it has been stated here that puts and calls are a detriment. I agree to that.

(Excerpt from the testimony of Mr. N. L. Moffitt, president, Merchants Exchange, St. Louis, Mo., before the Committee on Agriculture, House of Representatives, 67th Cong., 1st sess., p. 133, Hearings, Future Trading, Apr. 27, 1921:)

Mr. KINCHELOE. What evils are there, if any, that ought to be done away with by legislation, in your judgment?

Mr. MOFFITT. There are not many evils in our market to be done away with. The evil mentioned here we said we were willing to do away with. The board has announced that they are willing to do away with it, to eliminate the put-and-call evil.)

Mr. Watson S. Moore, member and representative of the Duluth Board of Trade, in his statement May 31, 1921, before the Senate Committee on Agriculture and Forestry (p. 98, Hearings, Future Trading in Grains, 67th Cong., 1st sess.), opposed trading in puts and calls. The following is an excerpt from his testimony:

Senator CAPPER. Do you have puts and calls at Duluth?

Mr. MOORE. No.

Senator CAPPER. Well, you regard that as a vicious feature of the business, do you?

Mr. MOORE. I do.

Mr. F. C. Van Dusen, member and representative of the Minneapolis Chamber of Commerce, in a statement before the Senate Committee on Agriculture and Forestry, Sixty-seventh Congress, first session, June 4, 1921 (p. 294, Hearings, Future Trading in Grain), in referring to trading in puts and calls, testified as follows:

Senator CAPPER. You would not defend puts and calls?

Mr. VAN DUSEN. There is quite a difference of opinion on that. Some people claim that it adds volume to the trading, and therefore makes the market more liquid and is desirable. On the other hand, I think that is one of the abuses, and possibly the disadvantages will outweigh the advantages. Personnally, I would not uphold trading in puts and calls.

(Excerpt from the testimony of Mr. James N. Russell, vice president of the Kansas City Board of Trade, before the Committee on Agriculture, House of Representatives, 67th Cong., 1st sess., p. 276, Hearings, Future Trading, Apr. 29, 1921:)

Mr. RUSSELL. I think the first step in the right direction in a proposed trial bill would be the elimination of these indemnities, so-called. That would eliminate, Mr. Chairman, a certain type of speculation that we would be glad to get rid of in our markets.

Mr. George T. McDermott, Topeka, Kans. (now circuit judge, United States Circuit Court of Appeals, Tenth Circuit), representing the Kansas Grain Dealers' Association before the Senate Committee on Agriculture and Forestry, Sixty-seventh Congress, first session, June 3, 1921 (p. 211, Hearings, Future Trading in Grain), condemned trading in puts and calls, as follows:

"The proposed bill eliminates puts and calls. This stops one of the worst forms of gambling, the bet on long odds fixed by the other man."

(Excerpt from statement of Mr. Clifford Thorne, Chicago, general counsel for the American Farm Bureau Federation, and for the Farmers' National Grain Dealers' Association, before the Committee on Agriculture, House of Representatives, 66th Cong., 3d sess., Jan. 25, 1921, pp. 945 and 989, Hearings, Future Trading:)

Mr. THORNE. * * * In regard to the practice of dealing in puts and calls, I do not want to undertake to define those terms. I understand they are understood to be as follows: When a man sells a put, he offers to buy a future, for instance, at a certain amount below the prevailing market, and the buyer of the put has the option to sell the future to him. Usually these expire the next day at the close of the market. When he sells a call he offers to see a future at a certain price, for instance, above the market, and the man that buys a call has the option to buy the future from him if he sees fit, and this is usually exercised, under the terms of the contract, by the close of the next day. I understand the prices for these privileges vary from $1 to $5—that is, $1 a thousand—and they usually deal in 5,000-bushel lots. I asked a member of the exchange if these options were practiced in to any extent, and he stated that they were, and that Mr. J. Ogden Armour is the biggest dealer in puts and calls in the world. He sells them every day It is estimated, according to this gentleman, whose name is Mr. John Hill, Jr., that Armour takes in from $10,000 to $20,000 a day by that method from the exchange. Mr. Hill has been a member of the exchange for over 40 years and for several years has been a member of the board of directors. He is also the man that led the fight against bucket shops successfully. Mr. Hill authorizes the statement that he regards this character of transaction as the cheapest form of gambling that can be practiced.

I want to say in that connection that the Chicago Board of Trade has repeatedly condemned dealing in puts and calls and ordered it abolished forthwith, without waiting for any future date certain. Away back in 1892 the directors met and considered the situation, according to this history of the board of trade—

"And in order to strengthen the board's position as to legitimate trade, an effort was made to stop trading in puts and calls. Leading traders were asked to abandon the practice, and the private-wire houses, with one or two exceptions, complied. They soon resumed, however, charging that the directors had failed to institute the vigorous campaign against privileges promised by them. A committee consisting of Messrs. Hamill, Allerton, Cudahy, Norton, and Wright next appeared before the congressional committee, and President Hamill stated that the board was opposed to trading in options but not in the futures, which he said maintained prices. He urged that the proposed act was class legislation, which would completely revolutionize the business of the country. So serious was the situation considered that the large loan commission houses sent out circular letters to all customers with blank petitions to be signed and forwarded opposing the bill."

While they were opposing the elimination of futures, they were urging the elimination of dealings in privileges.

In 1910 again we find the following situation:

"A lively controversy immediately arose over the amendment recommended by the directors, and John Hill, Jr., announced a few days later that unless trading in indemnities was no longer practiced he would ask the Congress to stop it. The next day most of the big houses agreed to discontinue the objectionable form of trading, and after a consultation with Attorney H. S. Robbins, the directors voted to abolish it, the new rule to take effect immediately. However, in September an amendment was passed by a vote of 550 to 105 providing for trading in indemnities under certain restrictions, and was said to be legally sound." * * *

Mr. THORNE. Now, to meet the situation, we have suggested several possible remedial measures. First, as to "puts and calls", which are admittedly gambling, which have been recommended to be abolished by the board of trade repeatedly by resolutions of the board, and which at one time were prohibited by statute and later amended; that could be abolished in the manner that several of the bills here contemplate—by taxation. I will refer specifically to the Tincher-Capper bill

Mr. MCLAUGHLIN of Michigan. Could that be reached by name in the law calling it "puts and calls"?

Mr. THORNE. They were called options or privileges and were so named in statutes, just like you have had bucket shops named in statutes. The name could be followed by a specific definition. The tax, in our judgment, could be levied on that immediately—a heavy, prohibitive tax. They are not necessary at all for hedging purposes, in our judgment, and there is no reasonable objection from any of our associates that we have been able to find to the immediate elimination of that phase of the activities of the board of trade.

The foregoing excerpts from the hearings before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry represent the views of the grain trade as expressed in 1921 when H. R. 5676, which subsequently was enacted as the Future Trading Act of August 24, 1921 (ch. 86, 42 Stat. 187), was before Congress. This was "an act taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of board of trade, * * *"

The validity of this act was attacked by eight members of the Chicago Board of Trade in behalf of all other members of that body before the Supreme Court of the United States in the case known as *Hill* v. *Wallace*. By the decision of the Supreme Court of May 15, 1922, certain provisions of the act were held unconstitutional as being an unauthorized use of the taxing provision of the Constitution.

Following the decision of the Supreme Court on May 15, 1922, Congress, at the second session of the Sixty-seventh Congress, reenacted legislation regulating transactions on grain futures exchanges. This new legislation, based on the commerce clause of the Constitution, is known by the short title of the Grain Futures Act of September 21, 1922. The grain exchanges continued their fight against Federal regulation and almost immediately attacked the constitutionality of the Grain Futures Act in the case of the *Board of Trade of the City of Chicago* v. *Olson*. The Supreme Court, on April 16, 1923, declared that transactions on boards of trade are affected with a national public interest and are subject to regulation by the Federal Government, and in a sweeping decision sustained the validity of the act.

Inasmuch as section 3 of the Future Trading Act of August 24, 1921, which placed a tax of 20 cents per bushel on transactions in indemnities, commonly known as "puts and calls", was not before the Court in 1921, the Grain Futures Act of September 21, 1922, is silent on the matter of indemnities. By 1923 some of the exchanges had apparently reversed their position on the matter of "indemnities." Through a single transaction on the Chicago Board of Trade made on October 23, 1923, by H. P. Trusler, of Emporia, Kans., a member of the Chicago Board, involving a tax of $200 on the sale of indemnities, the validity

of section 3 of the Future Trading Act was attacked through a suit to recover the amount of the tax paid to Noah Crooks as collector of internal revenue for the sixth district of Missouri. This case (*Trusler* v. *Crooks et al.*) was argued and submitted November 17, 1925, and was decided by the Supreme Court of the United States in favor of the plaintiff on January 11, 1926. Section 3 of the Future Trading Act having thus been declared unconstitutional, the Chicago Board of Trade the following day initiated trading in indemnities, or "puts and calls", with complete disregard of the position taken in 1921, when bills for the regulation of grain exchanges were being considered by Congress. As soon as the fear of regulation had passed, they no longer could see any evil in indemnities as an aid to excessive speculation.

TRADING IN INDEMNITIES IN JANUARY 1926

From January 11, 1926, trading in indemnities constituted a part of the daily transactions on the Chicago Board of Trade and other grain exchanges until the disastrous crash in prices the latter part of July 1933, when the futures market on the Chicago Board of Trade was completely demoralized following a 2-day decline in the price of wheat of nearly 30 cents per bushel.

TRADING IN INDEMNITIES DISCONTINUED FOLLOWING THE MARKET CRASH IN JULY 1933

Immediately upon the market crash on July 19 and 20, 1933, trading in indemnities was again prohibited by the Chicago Board of Trade at a meeting of the board of directors on July 20, under the provisions of rule 251. The degree of demoralization was so great that the markets were closed for 2 days, July 21 and 22, except for 15 minutes on Saturday, July 22, when the market was open for the purpose of exercising the weekly indemnities previously sold.

This crash in the wheat market again led the exchanges to seize upon the trading in indemnities as one of the evils of future trading that should be abolished. At a conference at the Department of Agriculture on July 25, 1933, representatives of the grain trade took the view that "the elimination by the exchange of trading in indemnities has removed one of the prime causes of excessive price movements." At this conference a committee representing the grain exchanges submitted to the Agricultural Adjustment Administration a report, in which they pledged recommendation to their respective organizations of various reforms "to further avoid the recurrence of violent price changes", among which were included the permanent elimination of trading in indemnities. This report was signed by the following representatives of the leading grain exchanges:

Peter B. Carey, president, Chicago Board of Trade; J. S. Hart, president, Kansas City Board of Trade; C. D. Sturtevant, president, Omaha Grain Exchange; P. B. Getchell, president, Minneapolis Chamber of Commerce; W. R. McCarthy, president, Duluth Board of Trade; J. H. Caldwell, representating Merchants Exchange of St. Louis; Thomas Y. Wickham, chairman, Grain Committee on National Affairs; Edward J. Grimes, vice chairman, Grain Committee on National Affairs.

This national grain conference was the beginning of consideration by the grain exchanges of a code of fair competition for grain exchanges under the National Industrial Recovery Act. This code, which was finally adopted by the trade, was approved by the President on March 20, 1934. Section 5 of this code provided that "each exchange, by proper regulation, shall prohibit and prevent all trading on such exchanges, by or through its members, in indemnities and contracts known as 'bids', 'offers', 'puts', or 'calls.'"

TRADING IN INDEMNITIES AGAIN RESUMED

On May 27, 1935, the Supreme Court of the United States, in its decision in the *Schechter case*, held invalid the National Industrial Recovery Act under which the Grain Exchange Code was operated. Soon thereafter the grain exchanges again set about to resume trading in indemnities which they had previously condemned as one of the evils of future trading that should be abolished. Accordingly, on October 14, 1935, the Chicago Board of Trade by a vote of its members provided for the resumption of trading in indemnities which had been prohibited since July 20, 1933. Since then trading in daily indemnities has been carried on with the restriction that purchases or sales for others during any one day shall not exceed 500,000 bushels.

INDEMNITIES PROHIBITED BY MOST EXCHANGES

Exchanges trading in grain are the only commodity exchanges that provide for the trading in indemnities. The rules of all other commodity exchanges either prohibit or are silent on the matter of indemnity trading. Such trading i specifically prohibited by the following exchanges:

New York Cotton Exchange.—Rule 28: All trading in puts and calls is strictly prohibited. Any member who trades or offers to trade in puts or calls may be suspended or expelled from membership by the board of managers, under section 81 of the bylaws.

New Orleans Cotton Exchange.—Rule 35, section 4: Dealings, or offering to deal, in "puts" and "calls" is strictly forbidden, and any member violating this rule, for the first offense shall be censured; for the second offense, suspended; for the third, expelled. The floor committee and the various officers of the exchange are charged with reporting any violation of this rule.

New York Coffee and Sugar Exchange.—Rule 17: Trading in puts and calls is not recognized by the exchange.

Any member who trades or offers to trade in puts and calls upon the floor of the exchange shall be subject to a fine of $10 for the first offense, and upon a repetition of the offense he may be suspended or expelled from membership, under section 46 of the bylaws.

Commodity Exchange, Inc., of New York City.—The commodity exchange embraces the following: (*a*) The Rubber Exchange of New York, (*b*) the National Raw Silk Exchange, (*c*) the National Hide Exchange, and (*d*) the National Metal Exchange.

The restriction on trading in indemnities in these four commodities is covered by a single rule of the Commodity Exchange, Inc., of New York City, as follows:

PUTS AND CALLS

Rule 513: All trading in puts and calls is strictly prohibited. Any member who trades or offers to trade in puts or calls on the floor of the exchange may be suspended or expelled from membership by the board, under section 210 of the bylaws.

Senator POPE. Has there been any contention in opposition to this position?

Mr. MEHL. Mr. Coughlin, I believe, presented a recommendation or proposed amendment to strike the prohibition in the bill against trading in indemnities or privileges.

I wish to discuss next the suggested substitute for the proctection of customers' margin money. I think we shall have to admit that this proposed substitute, offered by the exchanges, does have some interesting features. We should point out, however, that if the proposed plan were substituted for the one now in the bill, the bill would essentially have to be broadened in several important particulars.

In the first place, such a plan would impose upon the Department of Agriculture a duty not only with respect to commodities covered by the bill but also with respect to any commodity traded in for future delivery on any exchange, and would put the department of Agriculture in quite another field, namely, that of scrutinizing securities, which we conceive to be more particularly the function of the Securities and Exchange Commission. In order to discharge our responsibility under such a provision and see that a firm was liquid and could meet all customer obligations if all trades were closed at any time, we would, in the case of many large houses, have to determine the equities of customers not only in the commodities covered by this bill but in metals, sugar, coffee, cocoa, rubber, silk, hides, and many other commodiaties, in some of which speculation, apparently, is not a large factor. Our best information is that perhaps 95

percent of all of the trading in all commodities for future delivery in the United States based on value, takes place in grains and cotton, and that the other 5 percent is divided among 20 or more other commodities.

In spite of any ambition which the Grain Futures Administration might have to some day grow into a large bureau, as one witness suggested—a perfectly natural assumption, of course—we must confess that we are somewhat overwhelmed by this particular amendment. The provisions in the bill dealing with the protection of customers' margins may not be perfect and may not go far enough, and some practical difficulties may and are sure to develop, but we believe they will give customers some additional protection, and that if they should prove burdensome to certain commission houses those commission houses certainly could exist under them until such time as Congress would convene again and make necessary correction. You will recall that we were reminded by one exchange witness that Congress expects to meet next year and the year thereafter, so it would be possible, if a mistake were made, to correct it. In the meantime, I am sure that under the Secretary's regulations some administrative interpretation could be given which would not stop their business, and obviously the Grain Futures Administration would cooperate with the exchanges in any corrective steps found necessary. We are not anxious to legislate the Chicago Board of Trade out of business. Both Dr. Duval and myself have been in the Department for many years and we would like to continue. If we put the boards of trade out of business, we will have nothing to regulate. [Laughter.] So we think that the fears of the exchanges in that regard are rather unfounded, especially if we are as ambitious as they have suggested we might be.

We believe that under this bill the Secretary could make rules and regulations for the proper enforcement of the act; that it will be possible by administrative interpretation to take care of any and all possible difficulties that may arise. Furthermore, we think the plan set up in the bill, or rather as contained in the Secretary's suggested substitute for paragraph (2) of section 4 (d) on page 10, has some features in it; for example, the prohibition against commingling customers' funds with the funds of the commission firm has some distinct advantages, and would tend to discourage, if nothing more, the use of such funds by a firm for its own speculative operations or for the use of favored customers. Certainly, if the committee were at all disposed to consider favorably that method of protecting customers' margin money, the Department would have to have much more authority than is given in the proposed amendment.

I want to read into the record, not as a recommendation but as something to which the Senate committee may look if it should be disposed to give favorable consideration to such a plan, some additional language. There should be added to the exchange proposal two paragraphs reading as follows:

(3) such person shall, pursuant to rules and regulations promulgated under authority of this act, file with the Secretary of Agriculture twice each year, and more frequently if called upon, financial statements showing, in such detail as may be specified in the call, his true financial condition and responsibility; and

(4) Such person shall keep his books and financial records open to inspection at all times by any representative of the United States Department of Agriculture or of the United States Department of Justice. The duty to so keep such records shall continue as to all transactions and matters for a period of 5 years from the date thereof; and in the case of a person once registered as a futures commission merchant, such duty to keep and right to inspect shall continue for a period of 2 years after such registration has expired or been surrendered, revoked, or suspended.

Obviously, if such a large burden were imposed upon the Department of Agriculture, it would have to have broad authority to require financial statements and to examine books and records.

I will pass next to the matter of Federal warehouses, and I shall make only brief reference to that part of the Secretary's letter of June 27, 1935, which recommends a special section covering delivery of commodities on futures transactions out of federally licensed warehouses. As stated in the Secretary's letter, the purpose of this amendment is to prevent discrimination against those who prefer to operate under the United States Warehouse Act. It does not in any way encroach upon the rights of States nor force anyone to take out a Federal license. The States retain their full jurisdiction over warehouses within the State, and they lose their jurisdiction only with respect to such warehousemen as actually engage in warehousing commodities for storage or movement in interstate commerce, and who desire to come within the provisions of the Federal act. We think the merits of such a proposal are fairly obvious.

If the Federal Warehouse Act shall mean anything to those who prefer to work under it and store grain in interstate commerce, then their patrons should be able to enjoy the facilities of the exchanges, which are now unquestionably impressed with a public-utility character, by being able to take advantage of such a law. Moreover, we know that there are elevator interests in the Chicago market which would like to operate under the Federal act, and it may well be that this in itself would tend to create more and better warehouse space for the delivery of commodities on futures contracts, and would, indirectly at least, tend to prevent corners and squeezes by reason of there being more of these commodities of satisfactory quality in position to be delivered on futures contracts.

The argument offered by the exchanges on this particular matter I understood to be a strictly legal one, and in answer to which I can only submit for the record a copy of an opinion of the Acting Solicitor of the Department of Agriculture, Mr. C. W. Boyle, in a letter addressed to Dr. J. W. T. Duvel, Chief, Grain Futures Administration, under date of April 21, 1936. I wonder if I might be permitted to ask Mr. Kauffman, of our office, to read that letter?

Senator MURPHY. Certainly.

Mr. MEHL. Assuming that you wish it read rather than filed.

Senator MURPHY. Yes; we would rather have it read, unless you can digest the point and state it briefly. Is it a long letter?

Mr. KAUFMAN. It comprises about four typewritten pages—about three and a half.

Senator MURPHY. Go ahead and read it.

Mr. KAUFMAN (reading):

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C., April 21, 1936.

Dr. J. W. T. DUVEL,
Chief, Grain Futures Administration.

DEAR MR. DUVEL: You have requested my opinion as to the validity of the proposed amendment to the bill (H. R. 6772) to amend the Grain Futures Act. The amendment, which would be included at page 19 of the bill as subdivision (7) of section 5a proposed by the bill as an addition to the act, would require—

"SEC. 5a. Each contract market shall—

* * * * * * *

(7) require that receipts issued under the United States Warehouse Act (U. S. C., title 7, secs, 241-273) shall be accepted in satisfaction of any futures contract made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however*, That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

The Supreme Court held in the *Olsen case* (262 U. S. 1) that the Chicago Board of Trade is engaged in a business affected with a national public interest, subject to national regulation as such, and that Congress may therefore reasonably regulate its conduct for the purpose of preventing abuses and freeing its operations from undue discrimination. The Court said (p. 41):

"We find no difficulty under *Munn* v. *Illinois* (94 U. S. 113, 133) and *Stafford* v. *Wallace, supra* (258 U. S. 495), in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such. Congress may therefore reasonably limit the rules governing its conduct with a view to preventing abuses and securing freedom from undue discrimination in its operations."

The regulation proposed by the amendment under consideration is for the elimination of undue discrimination in that it would make receipts by federally licensed warehouses receivable in satisfaction of futures contracts under the same conditions as receipts issued by warehouses licensed by the State of Illinois.

Warehouse receipts are an important factor in futures transactions on the board of trade because the contracts may be settled by delivery of receipts calling for the kind, quality, and quantity of grain covered by the contracts. Buyers can bid more freely when they know that they will be sure to get what the contract calls for if they take delivery. Under the Federal Warehouse Act receipts must show the kind, the quantity, and the grade of the grain stored, so that delivery of grain of the kind, grade, and quantity involved in any futures transaction is assured by acceptances of a receipt of a federally licensed warehouse. Requiring acceptance of such receipts in satisfaction of futures contracts is reasonable because buyers are thereby assured of what they will get when they accept such receipts in satisfaction of their contracts and because receipts issued by federally licensed warehouses are entitled to the same consideration and treatment as receipts of warehouses licensed by the State of Illinois. Such a regulation is just as reasonable and just as essential to prevent discrimination as the one sustained in the *Olsen case* requiring the board to admit cooperative associations to membership on the same terms and conditions that other persons are admitted.

I understand it has been suggested that the proposed regulation is beyond the power of Congress because of the decisions of the Supreme Court in *Federal Compress Co.* v. *McLean* (291 U. S. 584), in which it was held that cotton stored in a warehouse is not in interstate commerce. There is nothing in those decisions, however, in conflict with the decision in the *Olsen case*. There was no legislative finding by Congress as to the effect of transactions in cotton upon interstate commerce and as to the necessity for regulating them. Such a finding exists as to the grain markets and has been accepted, approved, and applied by the Supreme Court in the *Olsen case*. Also in the *Olsen case* the Court held that grain is in interstate commerce notwithstanding it has been unloaded for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee, or destination. The Court said (p. 33:)

"The railroads of the country accommodate themselves to the interstate function of the Chicago market by giving shippers from Western States bills of lading through Chicago to points in Eastern States with the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee, or destination, and then to continue the shipment under the same contract and at a through rate (*Bacon* v. *Illinois*, 227 U. S. 504). Such a contract does not prevent the local taxing of the grain while in Chicago; but it does not take it out of interstate commerce in such a way as to deprive Congress of the power to regulate it, as is plainly intimated in the authority cited (p. 516) and expressly recognized in *Stafford* v. *Wallace* (258 U. S. 495, 525, 526). The fact that the grain shipped from the West and taken from the cars may have been stored in warehouses and mixed with other grain, so that the owner receives other grain when presenting his receipt for continuing the shipment does not take away from the interstate character of the through shipment any more than a mixture of the oil and gas in the pipe-lines of the oil and gas companies in West Virginia, with the right in the owners to withdraw their shares before crossing State lines, prevented the great bulk of the oil and gas which did thereafter cross State lines from being a stream or current of interstate commerce (*Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, 272; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, 281)."

Moreover, in the cotton cases the Court assumed the validity of the United States Warehouse Act, stating that by it the Federal Government has undertaken the control of warehouses in the furtherance of a governmental purpose to secure fair and uniform business practices.

That is the very purpose of the proposed amendment to the Grain Futures Act. It would eliminate certain unfair practices that exist in connection with the warehousing of grain for delivery on futures contracts and would thereby afford greater security and protection to those dealing on futures markets.

The validity of the Federal Warehouse Act is again recognized by the Court in the more recent case of the *United States* v. *Hastings* (296 U. S. 188), where it also assumes the validity of that portion of section 29 as amended in 1931, which reads:

"But the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as such license remains in effect." (7 U. S. C. 269.)

With respect to this provision, the Court said (p. 199):

"The amendment of 1931, with respect to conflict with the operation of State laws, does not militate against this limitation (of the act to interstate commerce), for while the amendment asserts the exclusive authority of the Secreary of Agriculture, it has relation to the authority conferred by the act, and the definition in the original act of the warehouses which may be licensed and the provisions of section 259 as to the products for which warehouse receipts are to be issued were left unchanged by the amendment."

Under the Federal Constitution the acts of Congress, pursuant to its provisions, are the supreme law of the land. Hence, in the event of any conflict between a Federal statute and a State statute, the Federal statute must control.

Very truly yours,

C. W. BOYLE, *Acting Solicitor.*

Mr. MEHL. Unless Dr. Duvel has some comment on this subject matter I shall pass on to the next point.

Dr. DUVEL. I think you had better go ahead.

Mr. MEHL. I have just been asked to make a clarifying statement regarding certain practices previously described. If I have in my testimony, by implication or otherwise, indicated that the practice of floor brokers in taking customers' orders into their own accounts is countenanced or approved by reputable commisison houses of the Chicago Board of Trade or other markets, I want to correct that impression.

Senator MURPHY. I think you have already cleared that up.

Mr. MEHL. I think it is only fair to say that no commission house I know of would knowingly permit that to go on, and I might say also that I believe some houses require their floor brokers trading for their own account to have their accounts with such house so it may see what is going on. They have no effective means of enforcing that requirement, of course.

Just one brief reference to butter and eggs and the inclusion of butter and eggs among the commodities covered by this bill. There is very little information the Grain Futures Administration can give you on this except that this provision was added in the House bill at the request, I believe, of some Wisconsin dairy interests. The House debate on the bill shows that Representative Boileau, of Wisconsin, was especially interested in the butter-and-egg provision.

As far as the Grain Futures Administration is concerned, of course, we know nothing about butter and eggs. Being of a suspicious mind, as one of the exchange witnesses said of us yesterday, I suppose we might think there were some "rotten eggs" in the egg business as well as in the grain business. But we don't know. We have no authority to examine books and records pertaining to butter and egg futures. We have had no occasion to get any information. All we know is that the general principles of future trading applying to grain apply to all commodities which are dealt in for future delivery, and we know also that the technique of speculators is essentially the same in all commodities.

Senator MURPHY. Has the Department, of your knowledge, received any general complaint from produce growers?

Mr. MEHL. Such complaints, if they came, would naturally not come to the Grain Futures Administration. We have not made inquiry; perhaps we should, as to whether such complaints may have come to the diary division of the Bureau of Agricultural Economics. I don't know.

What I have said about butter and eggs, of course, applies to cotton. The Grain Futures Administration does not pretend to have any knowledge of cotton other than as it has knowledge of speculation and the technique of future trading in general.

We believe that perhaps it might facilitate consideration of this bill if we put into the record at this time a suggested section 13 which might be a way out of the difficulty which was discussed yesterday, a proposed section 13 to read as follows:

Senator POPE. In lieu of the present amendments with reference to cotton in the bill?

Mr. MEHL. I think I misspoke. It should be section 14. We are not attempting to give you legal language here, but just the idea.

Senator MURPHY. Where is section 14?

Mr. MEHL. There is no section 14. This will be an additional section 14 on page 27 of the bill.

Senator MURPHY. That will be in the section without a number, as it appears in the bill?

Mr. MEHL. No; it will be section 14 at line 16, following section 13 of the bill.

The Grain Futures Act is amended by adding after section 12 (U. S. C., title 7, sec. 16) the following new section.

Senator MURPHY. Do I understand that that would occur at the end of line 16 and before 17? You are going to put section 14 there?

Mr. MEHL. Yes; a new section 14 of the bill to add a new section 13 to the present Grain Futures Act as amended by this bill:

SEC. 14. The Grain Futures Act is amended by adding after section 12 (U. S. C., title 7, sec. 16) the following new section:

"SEC. 13. In the event of any conflict between the provisions of this act with respect to cotton and the provisions of the United States Cotton Futures Act of August 11, 1916, the provisions of the latter, as now or hereafter amended, shall prevail."

That would leave you in this situation: Cotton could be put back in the list of commodities defined on page 2 of the bill, and in the event that legislation which is especially applicable to cotton is added by amendment to the Cotton Futures Act, to the extent that it is included in the Cotton Futures Act, such act would prevail over anything and everything contained in this bill applicable to cotton.

In the meantime, cotton producers will have the advantage of what is in this general commodity-exchange bill insofar as its provisions are applicable to cotton. That is only a suggestion in the hope that in it you may find a solution for some of the difficulties with respect to cotton.

Senator MURPHY. Have you any extra copies of that suggested amendment?

Mr. MEHL. I have one here [handing the amendment to Senator Murphy].

I wish to discuss next the proposed amendment which was offered by Senator Murphy in behalf, I believe, of the Quaker Oats Co., and applying especially to the problems of manufacturers.

Senator MURPHY. Offered by request for consideration of the committee.

Mr. MEHL. I mentioned the name of the Quaker Oats Co., Senator, for the reason that Dr. Duvel and myself have had the privilege of discussing this matter with Mr. Stuart and Mr. Murray of the Quaker Oats Co.

Senator MURPHY. Yes; they so advised me.

Mr. MEHL. And we have told them that we recognize the validity of their claim that the definition of hedging as found in the bill is not broad enough to meet their particular requirements, namely, the buying of oats futures in anticipation of the sale of standard advertised products for possibly 11 months in advance of the actual buying of such oats. They claim, I believe, that when oats futures are selling on the Chicago Board of Trade at a price which will assure them a fair retail price for oatmeal, say, at 10 cents per package, they know rather definitely, based on past experience, how much oats in the form of package goods can be sold, and that in such a situation they want to plan their advertising campaign, purchase their labels and boxes, let their advertising contracts, and so forth, and buy the futures in what they would say is a hedge against this investment.

Merely for consideration of the committee, I wish to submit a substitute amendment for that proposed by Quaker Oats. I have discussed this proposed substitute with Mr. Murray, of Quaker Oats

Co., and was given to understand that it would be acceptable to him in the form in which I submit it.

Senator MURPHY. Would you rather offer a suggested amendment to the language of the bill as drawn, rather than to his suggested amendment?

Mr. MEHL. I will offer both.

Senator MURPHY. We would like to have your determination of what would be the best to do. You appreciate their problem just as well or better than I could from their statement of it.

Mr. MEHL. We have told them, of course, very frankly that any exception to millers to carry what we have heretofore regarded as a speculative position is a rather delicate matter and a difficult thing, and opens the way for illegitimate speculation, and means going beyond an established speculative limit. But, in fairness to the industry, I do want to say that we recognize that a situation could arise in which they would wish to do this very thing. Now, we think that the limitation which would be fixed on speculative trading would, under ordinary circumstances, be large enough to meet their particular situation. The only thing I want to do at this time is to make sure that, if the proposal receives favorable consideration by this committee, it should be modified in certain particulars which I shall describe.

Senator MURPHY. What page is that? Do you remember?

Dr. DUVEL. Page 7.

Senator POPE. You propose to work that in with the present provisions?

Senator MURPHY. Before you proceed with that suggestion, may I develop what you have in mind as determining the amount of grain to be dealt in as a hedge? Must they have contracts of sale covering that grain when processed? Is that your idea?

Mr. MEHL. No; if they did have contracts of sale against which they were buying futures, then, of course, they would be exempt under the definition of hedging already contained in the bill.

Senator MURPHY. They would not have contracts of sale of the finished product, the package product, naturally. They would have the experience of the prior year or years as their guide and your guide in determining what was a reasonable hedge.

Dr. DUVEL. I think that if Mr. Mehl will read the first of that substitute it will clarify it.

Mr. MEHL. I will read our suggested substitute:

On page 7, line 10, after the word "person", strike the period, insert a semicolon, and add the following subparagraph:

"(C) Subject to prior approval by the Secretary of Agriculture, an amount of such commodity the purchase of which for future delivery would be a reasonable hedge against the estimated manufacturing or milling requirements of such person during an operating period of not more than 6 months based on actual past experience."

That is broader in some respects than the proposal submitted by Quaker Oats Co., because we understand that other industries might have the same problem. I am not prepared to say that this amendment should be made. I simply want to throw it in in case the committee gives favorable consideration to such a proposed amendment.

Senator MURPHY. Then if you are not prepared to say that it should go in, will you advise us, please, just what you mean to be your rule with respect to this other limitation here?

Mr. MEHL. Under the bill as drawn——

Senator MURPHY (interposing). That would be covered in 3, I guess?

Mr. MEHL. The present paragraph (B) on page 7 of the bill would permit a person to include in the amount of any commodity which might be hedged by the purchase of futures, an amount of such commodity which "would be a reasonable hedge against the sale of any product or byproduct of such commodity by such person." That, of course, is not broad enough to cover the purchase of futures merely against anticipated sales of the packaged goods.

Senator MURPHY. Well, you are impressed with the necessity of doing that, aren't you? That is, if you make your guide in anticipation their actual experience in prior years?

Mr. MEHL. It is a matter concerning which we have no factual knowledge. I can say that we are impressed with the claim from the purely theoretical standpoint, but we do not know, as a matter of fact, how much of a leeway should be given. We think there is grave danger of opening the thing too far, and that is why we suggest this limiting language which would require them to at least submit their problem to the Secretary of Agriculture, and if he were convinced of the need for such practice, he could approve it. Of course, they could abuse the conditions of the Secretary's approval once. They could not do it a second time, because when they came to him thereafter he would say: "No; I am not impressed with your claim, and based on previous experience I must decline to approve." There is that much additional protection in the language we have suggested.

Senator MURPHY. I just don't get that. This bill is frankly not directed at, and does not apply to the legitimate hedging transaction. Now, the question arises as to what is a legitimate hedge. Clearly, it is a legitimate hedge to anticipate needs as related to proven past experience. If one of these industries, for instance, consumed, say, 5,000,000 bushels of oats which it had hedged, one would be perfectly justified in assuming a hedge against 5,000,000 bushels the next year to be a reasonable hedge. Your point is that they might exceed legitimate business needs. Well now, that really classifies them as traders on a speculative basis. Do you think that they do speculate rather than seek to protect their own position in respect to oats on hand?

Mr. MEHL. I would say that the conception of hedging in the trade generally is not broad enough to include that particular situation as a hedge risk, because, except for the knowledge based on past experience that they can move the manufactured product, oatmeal, at a price not above, say, 10 cents a package retail, they would be affected in a speculative way by all of the changes in the market to which they were subject. In other words, they are long futures; if the price of oats goes down, they suffer a loss except for the fact that, based on past experience, they know they can still market the manufactured product in pursuance of a planned advertising campaign at the higher price.

Senator MURPHY. They don't want a net position in respect to their trades, do they?

Mr. MEHL. I am not sure about that.

Senator MURPHY. Do you think so? Do you think they do?

Mr. MEHL. I am not sure that I understand you.

Senator MURPHY. Do you think they want a net position, long or short, in their trades for hedges?

Mr. MEHL. Yes; I know they do, so far as the definition of hedging is concerned in the bill. It is not broad enough to meet their requirements.

Senator MURPHY. Then wouldn't you recommend something to meet their requirements or the requirements of the other processors?

Mr. MEHL. I do so with reluctance, Senator, for this reason: We cannot legislate for just one unit in an industry. We must consider its effect on other units as well. I have some figures here on milling capacity. This sort of an exemption, this provision, could be taken advantage of by mills and others who sell standard advertised products. This would include flour. The General Mills Incorporated, for example, running at, say, 50-percent capacity, would mill 50,000,000 bushels of wheat during the year. Now, General Mills do not speculate, of course, but the way would be open for them, if they wished to do so, to take a long position in the wheat futures market, based on a previous experience, of 50,000,000 bushels or more, without any offsetting sales of flour. This would be granting an exemption from the speculative limits to be imposed to an extent that we do not think is safe. Certainly this would be unsafe unless it be specifically qualified by the requirements of prior approval by the Secretary of Agriculture. Let them come in and state their case. They already have a leeway of 2,000,000 bushels, assuming that such a limit would be fixed. They could have that amount as a purely speculative line. They are already exempted as to this bona fide hedging requirement.

Senator MURPHY. They would have that.

Mr. MEHL. Yes; certainly, they would have that 2,000,000 bushels. They say that is not enough. We don't know. We have no knowledge upon which I would be justified in telling you that it is either enough or that it is not enough.

Senator MURPHY. Your idea is to require them to submit the information in advance?

Mr. MEHL. Yes.

Senator MURPHY. That would broaden it out to cover more than a single processor.

Mr. MEHL. Yes.

Senator MURPHY. It would include the flour fellows.

Mr. MEHL. Yes. I believe there are other industries also that would be affected.

Senator MURPHY. Here a corn products company makes the suggestion that "the doubt arises"—having reference to paragraph B page 7—"the doubt arises from the interpretation of the words 'against the sale' in the next to the last line. Does this mean sale of products on hand at the time the purchase of futures is made, or would it be interpreted to cover any sale made at a future date?" And the suggestion is made on page 7, line 9, "This could be clarified if the phrase read 'against the present or future manufacture or sale of any product or by-product of such commodity.' "

Now, your answer to that is "Let them submit the problem to the Secretary in advance, and have an approval."

Mr. MEHL. Yes. And, as I stated, I have discussed with Mr. Murray, our suggested language, and he said it was acceptable.

Senator MURPHY. This suggested amendment of yours to his proposed amendment?

Mr. MEHL. Yes.

Senator MURPHY. We can put that right in the act here.

Mr. MEHL. But one more word. In any event, if the language contained in the first suggested proposal is accepted, there should be included this qualifying clause:

Subject to prior approval by the Secretary of Agriculture.

Senator MURPHY. Suppose we picked up your substitute with their suggested amendment just as it is and put it in on page 7, line 10, that would cover the whole situation?

Mr. MEHL. Yes. I will say we are reluctant to go even that far, because we do not know what the various ramifications may be. The facts presented by Quaker Oats Co. as affecting its particular situation are undoubtedly correct.

Senator MURPHY. Well, it is a great industry, and these great industries—you don't want to make gamblers of them if you can help it.

Mr. MEHL. I am again running over my time, Senator.

Senator MURPHY. Go ahead. I have taken up a great deal of the time myself.

Mr. MEHL. I have two other matters that I wish to discuss; first, the matter of the Secretary's power to make regulations and, secondly, the matter of rebating.

With respect to that part of the Secretary's letter to the chairman of the Senate Committee on Agriculture and Forestry of June 27, 1935, suggesting certain changes in the House bill, I think I should clarify the record as regards the Secretary's position concerning the so-called rebating provision of the bill.

If you will turn to page 23 and underscore the words in line 13, "local member associations", and then in line 16 underscore the word "producer", I think you will see that this paragraph would authorize a central cooperative association to contract not only with its regional associations on a bushelage basis, but also with a local member association, and pay it for business received. The local member association in this case would be an affiliated farmers' elevator company, a cooperative. The Secretary believes, and we believe, that such an arrangement would be rebating within the meaning of board of trade rules.

Payments could be made, under the language there employed, to the local elevator company, shipper of the central association, on a bushelage basis, so long as such local association did not, in turn, distribute such money among producer-members. The limiting word is "producer." In other words, in such a case the central association could, whether it made money or lost money, pay a local farmers' elevator company, member of the regional association, a quarter or a half a cent per bushel for business sent by such local elevator to it so long as the local elevator did not in turn distribute it among its producer-members. I am sure that neither the Farmers National Grain Corporation nor the regionals would want to do the thing

that might be done under that language, and I am sure also that Mr. Taber, Mr. Kennedy, and Mr. Stewart, who objected to the Secretary's proposal, would agree with us on that point. The arguments advanced by them in these hearings as to why dividends on capital stock should be regarded as an expense item properly payable out of compensation received by the regionals from the central association were not before the Secretary at the time he made his recommendations. What stood out then was the fact that the central association could, without regard to the regionals, go and say to a local farmers' elevator: "We will pay you so much per bushel for shipping your grain to us." The record should show that this is what the Secretary had in mind and that he had no intention of foreclosing debate on the other related questions referred to by Messrs. Taber, Kennedy, and Stewart.

We come next to the exchange proposal to take away from the Secretary of Agriculture the right to make rules and regulations to carry out the provisions of this act. With this, of course, we disagree entirely. The exchange, I believe, objected to the words "in the judgment of the Secretary of Agriculture" appearing in line 2, page 26, of the bill.

Senator MURPHY. They view that as an unconstitutional delegation of power?

Mr. MEHL. But we take it that the making of regulations by the Secretary of Agriculture does essentially call for the exercise of judgment on his part, and we submit that the language as a whole limits the Secretary—this is on page 26—limits the Secretary to the making of such regulations as are reasonably necessary to carry out the purposes of the act. There is no reason to fear the exercise of such authority. It is absolutely necessary in a law of this kind dealing with various commodities and in various markets to authorize the Secretary to make such regulations.

Senator MURPHY. Did you have the opinion of your solicitor in relation to that?

Mr. MEHL. We had the opinion of the Solicitor's office on all the provisions of this bill.

Senator MURPHY. And he approved this paragraph?

Mr. MEHL. Yes. And we think that the fears of the exchanges on this point are unfounded, and that on the basis of 12 years' experience with the Grain Futures Administration in the administration of the act they should have full assurance that the Secretary will deal fairly with them. That is all that I have to offer.

Senator MURPHY. We will recess now until 2:30 this afternoon.

(Whereupon, at 1:20 p. m., a recess was taken until 2:30 p. m. this day.)

AFTER RECESS

The committee reassembled at 2:30 p. m., pursuant to recess.

Senator MURPHY (presiding). The committee will be in order.

Are you ready to proceed, Mr. Goldsmith?

Mr. GOLDSMITH. Mr. Chairman, our next witness is also connected with the Government. For the Government he had considerable to do in the courts with the controversy between Farmers' Grain Corporation and the board of trade. He has recently completed

his share of the work in connection with the writing of the Cutten brief for the Supreme Court of the United States and now he is very busy trying to get another brief in, but has kindly consented to speak as a witness for the proponents of the bill for a few minutes.

I take pleasure in introducing Wendell Berge, special assistant to the Attorney General.

STATEMENT OF WENDELL BERGE, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

Mr. BERGE. Mr. Chairman and members of the committee, as Mr. Goldsmith has mentioned, for the last several years I have had some connection with litigations under the Grain Futures Act and have on several occasions acted as legal adviser for the Commission, consisting of the Secretary of Agriculture and the Attorney General and the Secretary of Commerce; and I guess it was on that account that it was thought I am qualified to make a few remarks with respect to this pending bill.

First I would like to speak briefly about section 9 of the bill, which adds to the Grain Futures Act two sections, sections 6 (a) and 6 (b).

Section 6 (a), as I understand it, provides that a board of trade shall not exclude from membership and privileges any association or corporation engaged in the cash grain business, and having adequate financial responsibility, which is organized under the cooperative laws of any State and which has been recognized as a cooperative association of the producers by the United States Government or any agency of the Government if that association agrees to comply with the lawful terms and conditions that may be imposed upon other members of the board.

Stated otherwise, it provides that if a dispute arises as to eligibility of a cooperative association and if, in that dispute, the board of trade contends that a candidate for membership and privileges under the provisions of section 5 (a) of the old act—the provision that assures equal rights on boards of trade to cooperative associations—but if a dispute arises as to the eligibility of a particular association under that section, this new section would provide that it shall not be barred until it has been tried.

Or an existing member of the board of trade theretofore considered a lawful cooperative of producers could not be expelled until it had been tried—tried not alone by the board of trade—although I see absolutely nothing in the bill that would prevent a board of trade, a grain exchange, from holding as many hearings and subhearings as it desires to determine what its judgment is as to the eligibility of such a cooperative association.

But before such an association could be barred and made to suffer the penalties, the detriment, that comes from nonmembership to a grain association that is organized primarily for the marketing of grain, there would have to be this complaint made to the Commission and a trial before the Commission under the act.

In effect, what section 6 (a) does is to provide for an interim membership for any association or corporation which is prima facie a cooperative pending the final determinations of that question by

the Commission or by the courts. Underlying this provision is the notion that an association having prima-facie attributes of cooperativeness ought not to be denied its legal rights first and tried afterward.

The test adopted in this section is that an association or corporation organized under the cooperative laws of any State, or not organized under such laws but recognized as a cooperative association of producers by the United States Government or any agency thereof, such as the Farm Credit Administration, is prima facie a lawfully formed and conducted cooperative association of producers.

If an association or corporation is so organized, or so recognized, section 6 (a) requires that in order to exclude such association or corporation from board of trade membership and privileges a board of trade must make a showing before the Commission that such association or corporation is not lawfully entitled to such membership and privileges.

A board of trade thus cannot deny membership and privileges to an association or corporation meeting the prima-facie test pending a long-drawn-out determination before the Commission and the courts as to the eligibility of such association or corporation.

Now, what are the reasons which prompt such a provision? Let me relate briefly the defects inherent in the present procedure. As matters now stand, when an association or corporation having the prima-facie attributes of cooperativeness believes it is being denied rights accorded to it by section 5 of the Grain Futures Act, that is, when it cannot gain membership and all privileges on a board of trade, it must file a complaint with the Secretary of Agriculture asking for a hearing before the Commission. If such hearing is granted, the complainant and the board of trade both appear and offer evidence.

If the Commission makes findings favorable to the complainant and finds that the board of trade has denied the complainant rights accorded to it by section 5 (e), the least the Commission can do is to enter an order suspending the contract market designation of the board of trade for a specified period not to exceed 6 months.

If such an order is entered, the board of trade may appeal to the circuit court of appeals. Protracted litigation may result, and during the period of such litigation, the complainant will be denied the rights which section 5 (e) confers. If the order of the Commission is ultimately upheld, the board of trade must cease to operate as a contract market for the period specified in the Commission's order.

In other words you have, it seems to me, two defects. In the first place, assuming now that the question is well taken and that the board of trade has erred in its denial of trading privileges to the cooperative—in the first place the cooperative only presents its complaint when it is barred from the board of trade, or when an expulsion is immediately threatened, and in all likelihood that expulsion is made effective before the Commission can act on the matter, and protracted litigation may keep the association out for a year or so, even though it is ultimately upheld by the courts.

So, in the first place, the act is ineffective in assuring to cooperative associations what I take was the original purpose in passing the act.

And, in the second place, the remedy is inappropriate, because if the Commission is ultimately upheld, the board of trade is closed for a period of not to exceed 6 months; and even then it is conceived—although I will admit as a practical matter that it is not likely—that the cooperative might not be admitted to membership and privileges which the act intended.

The remedy is to close the board of trade, not to order directly the relief that it is really purposed to give the cooperative association; and the relief, that is, considering the board of trade, may or may not be effective.

So that you have an adequate protection for the cooperative association during the period of litigation, and you have the possibility even then that it will not be effective, but that the board of trade may suffer an unusually harsh penalty, which would be felt not only by the parties to the dispute but by innocent members of the board of trade.

The remedy to the first defect is ascertained in section 6 (a), which provides, in effect, this interim membership pending trial.

The remedy to the second is that in section 6 (b), which provides a cease and desist order rather than an expulsion order.

Under section 6 (b) of your pending bill, if the Commission under the act finds that a cooperative association is being improperly barred from membership; or, for that matter, if the Commission finds that any other violation of any type is being committed by the board of trade, under the pending bill the Commission can directly order that the board of trade cease and desist from the violation.

There can be an appeal from this cease and desist order through the courts, and if the Commission wins the case and it is upheld, the result is that the board complies and there is no unusual and harsh penalty imposed.

The present penalty is backhanded, and the new one would be direct.

I would like to refer briefly to some of the past litigations.

Senator POPE. Before you do that, have you studied the question of the constitutionality of these sections—say section 4 (e), which requires registration of floor brokers—section 4 (e) on page 11—and, more particularly, section 8 (a), at the top of page 25; and then referring particularly to the section at the top of page 26, which gives the Secretary of Agriculture power to make such rules and regulations as he may deem reasonably necessary?

Mr. BERGE. Yes, Senator; in a way I have.

Senator POPE. There was criticism yesterday as to the question of delegation of power on that, and the original act delegated power to the Commission to deal with contract markets, whereas this gives to the Secretary himself the power to deal with the individual members of the market.

Mr. BERGE. Well, I have given some thought to that, and I would like to take it up. I wonder if I could defer that for a moment and, after I have finished reciting the facts with respect to this *Farmers National case*, I would like to give you what I can on that.

Of course, when I speak on the constitutionality, I am not giving the opinion of the Attorney General, but I would be glad to give

my own opinion based upon the slight experience I have had with licensing cases—but, if I may proceed briefly with the other matter first?

Senator POPE. All right.

Mr. BERGE. I would like to use this case because it illustrates the trouble, as I view it, with the whole procedure.

I think it was April 1932, in the spring of 1932, that the Farmers National Grain Corporation complained to the Secretary of Agriculture that they had been denied clearing corporation privileges on the board of trade.

The Commission ordered a hearing on this complaint. The hearing was held in June of 1932. The interested parties, including counsel for the board of trade and counsel for the Farmers National, appeared; and there were extended hearings before the Grain Exchange Commission consuming 3 or 4 days of their time. Then, after due deliberation, they entered an order in July of that year, closing the board of trade for 60 days—the order suspending its contract market designation for that period.

The Commission found that Farmers National was a lawfully formed and conducted cooperative association of producers engaged in cash-grain business and having adequate financial responsibility, and that it had agreed to comply with all terms and conditions of board of trade membership which could lawfully be imposed. The Commission ordered that the contract market designation of the board of trade be suspended for 60 days.

The board of trade immediately appealed to the circuit court of appeals for the seventh circuit under the judicial review provisions of the act, and the case was argued in October and submitted fully on briefs.

There were some difficulties presented in the case. The courts took nearly a year to decide the case. The decision was finally rendered in October of 1933.

On most of the questions involved, including certain constitutional questions with respect to the validity of the procedure for revoking and suspending contract market designations, the courts upheld the Commission and upheld it in its findings of fact, except that it found that its findings were incomplete in one respect, in that they did not break down the trades which Farmers National had had with the Grain Stabilization Corporation, to determine which of those trades involved the grain of members and which involved the grain of nonmembers—a technical point and yet one which the court viewed was one warranting remanding the case to the Commission.

In this one respect the court desired further findings relating to stabilization business, and the matter was remanded to the Commission for further evidence and findings on that one question.

The court also held that if such subsequent findings of the Commission should be unfavorable to Farmers National it would be without prejudice to Farmers National again to complain to the Commission if in good faith and in practice Farmers National should definitely abandon such practices as the Commission had found had resulted in exceeding the nonmember business limitation of the Capper-Volstead Act.

The Commission, believing that the Supreme Court ought to pass on the question of whether compliance with the Capper-Volstead limitation on nonmember business was necessary, and also upon the question of whether business done for the Stabilization Corporation was nonmember business within such limitations, filed a petition in the Supreme Court for a writ of certiorari to review the judgment of the circuit court of appeals.

Meanwhile, however, the Chicago Board of Trade apparently reversed its position and admitted the Farmers National Grain Corporation to clearing-corporation privileges.

I assume Farmers National is still a clearing-corporation member.

The board of trade then filed a brief in opposition to the petition for certiorari, in which the board contended, among other things, that because of its action in granting Farmers National membership in the clearing corporation, the case had become moot.

The Supreme Court denied the petition for certiorari, after the board of trade had called to the court's attention that the Farmers National had been granted clearing-corporation privileges.

Of course, we don't know whether the petition was denied for that reason or for some other reason; but, nevertheless, there were good grounds for arguing that the case had become moot.

But the significant thing, however, is that there was a period of extended litigation, and during that time the rights of the Farmers National, granted by the Act, were not being observed. If we assume that the board of trade properly admitted Farmers National when it did, those rights were not being observed, because there was nothing that I recall amounting to a change of facts between the time that the litigation was instituted and the time that Farmers National was admitted.

Now, bearing in mind that this bill protects the grain exchanges and their right to take summary action to expel cooperative associations that do not have adequate financial responsibilities, it seems to me that it is eminently fair that they have an interim membership while the question of their eligibility is being litigated—and also that the Commission be given power to enter a direct cease and desist order so that in order to argue for the rights of the cooperative you do not have to argue that the whole board of trade be closed and have to answer the argument that there are possibly serious economic defects which would result from such closure.

Senator NORRIS. Before you go on with that, I would like to ask you a question about the—what is it—the Farmers National?

Mr. BERGE. Yes.

Senator NORRIS. That was commenced in April 1932?

Mr. BERGE. It was commenced by the filing of a complaint in April 1932.

Senator NORRIS. In April of that year?

Mr. BERGE. Yes.

Senator NORRIS. And it was tried in June 1932?

Mr. BERGE. Tried before the Commission in June of 1932; yes.

Senator NORRIS. It was tried in June?

Mr. BERGE. Yes.

Senator NORRIS. It was appealed to the circuit court, and it stayed in that court until October 1933, did it not?

Mr. BERGE. That is correct, Senator, with this addition to what you have said: The case was submitted to the court in June 1932. That is, between June and November you had these steps:

The Commission had the case in advisement about a month, and entered its order in July 1932. That is during the summer when the circuit court of appeals were not in session, and the appeal was docketed within a 30-day period, I think early in August, and the printing of the record and briefs and preparation of argument then followed, and the case was submitted in November.

Senator NORRIS. November 1932?

Mr. BERGE. Yes.

Senator NORRIS. And it commenced in April of that same year, was finally submitted in November, and then the circuit court of appeals just took it under advisement?

Mr. BERGE. Yes; took it under advisement from December 10, 1932, until October 31, 1933.

Senator NORRIS. Practically a year. So that you commenced the case in April 1932 and got a decision of the court in October 1932?

Mr. BERGE. Practically speaking, that is correct.

Senator NORRIS. And then they applied for a writ of certiorari in the Supreme Court of the United States?

Mr. BERGE. The Government did that, Senator.

Senator NORRIS. Yes; the Government did that. That is right. And while that application for that writ was pending in the Supreme Court, the board of trade did what?

Mr. BERGE. They admitted Farmers National.

Senator NORRIS. That was the issue, was it not?

Mr. BERGE. Oh, yes.

Senator NORRIS. They did just what you started out to have them do—and they voluntarily did that?

Mr. BERGE. Yes.

Senator NORRIS. So that they did voluntarily what the litigation said they did not have to do, after about a year and 6 months of delay?

Mr. BERGE. I think that is a fair statement?

Senator NORRIS. And it cost—how much did it cost both parties, now?

Mr. BERGE. I could not undertake to say. I just have no idea what the cost was.

Senator NORRIS. You don't know what the attorneys' fees were?

Mr. BERGE. I know that ours, of course, were small. We are on salaries, Senator.

Senator NORRIS. How many attorneys were on the other side?

Mr. BERGE. Well, the law firm of Kirkland, Fleming, Green & Martin represented the Chicago Board of Trade. The law firm of Mayer, Meyer, Austrian & Platt represented the Farmers National Grain Corporation, who intervened in the suit; and the Government was represented by——

Senator NORRIS. By its regular attorneys?

Mr. BERGE. Yes; by its regular attorneys, in the Department of Justice.

Senator NORRIS. Have you any idea how much the actual cost, like printed briefs and so forth, amounted to?

Mr. BERGE. Oh, I could guess at that.

Senator NORRIS. Well, about how much?

Mr. BERGE. The record in that case, the printing of it, must have cost $1,500 to $5,000. The actual printing of the briefs in the case, possibly amounted to $1,000. Then there was the time of all the lawyers, and the traveling expenses and other expenses.

Senator NORRIS. There is no reason to suppose that these great lawyers donated their time, is there?

Mr. BERGE. Certainly not. But I do not think it is appropriate for me to venture any opinion as to the fees which were paid.

Senator NORRIS. No. Well, they got through with all that expense and all that delay, and then did just what you started out to have them do?

Mr. BERGE. That is correct.

Senator NORRIS. Although they won the suit?

Mr. BERGE. Well, we have always argued about that, Senator. [Laughter.]

Senator NORRIS. In order to determine that, you will have to have another suit, won't you?

Mr. BERGE. There is, of course, no longer any issue on those facts. That particular controversy is moot.

Senator NORRIS. Yes; you argued it until it became moot. Did the Liberty League ever take a hand in that? [Laughter.]

Mr. BERGE. No, Senator; that was before the days of the Liberty League.

Senator NORRIS. That brings me up to one of your remedies which you say section 6 (a) provides. In other words, it provides that during the dispute and litigation, if there is any, about expelling some organization from the board of trade, they shall remain in while that litigation is going on? That is provided by section 6 (a) of this bill we have before us now?

Mr. BERGE. Yes.

Senator NORRIS. That is one of the remedies in 6 (a), is it not?

Mr. BERGE. Yes.

Senator NORRIS. It is the first one you mentioned?

Mr. BERGE. Yes. The other one I mentioned is really in section 6 (b).

Senator NORRIS. The other remedy is in section 6 (b); but this is the object of 6 (a)?

Mr. BERGE. Yes.

Senator NORRIS. In other words, while this difficulty is going on, if there is any difficulty, the member that they are trying to expel stays in?

Mr. BERGE. Yes; provided the member meets certain requirements.

Senator NORRIS. Oh, yes.

Mr. BERGE. That is, of an ordinary business corporation.

Senator NORRIS. Oh, yes.

Mr. BERGE. But if that member is organized under the laws of a State——

Senator NORRIS. Of course; that is what I mean.

Mr. BERGE. It stays in, except that that is qualified, I take it, by that provision with respect to financial responsibility.

Senator NORRIS. Oh, yes. I am laying aside all those. But, ordinarily it stays in until you have a verdict that puts it out?

Mr. BERGE. That is right.

Senator NORRIS. So that you have remedied by that, if we pass the act, a procedure which put him out until it was determined that they had a right to put him out or that he could stay in?

Mr. BERGE. Precisely.

Senator NORRIS. Is that not a remedy of the old law such as we have in practically all the statutes of the United States? Even though the applicant for membership should win in the end, he would have lost all of the advantages of being in during the term of the litigation?

Isn't that happening every day in the Government in hundreds of suits where some judge somewhere in Kansas or Maine or Nebraska issues an injunction against you fellows for enforcing laws, and they are not enforced until finally, in the end, some day the Supreme Court passes on it and if they uphold the law then the fellow can stay in?

Now, what difference is there between the difficulties existing with those groups and between those difficulties existing with everybody who does not want to obey a law of the United States Congress?

If it is a good thing to remedy the law for these cooperatives, would it not be a good thing to remedy the law for everybody?

Mr. BERGE. Of course, if you are thinking of the predicament that many of the Government officials charged with the duty of enforcing laws find themselves in, on account of the liberal policy of rendering injunctions——

Senator NORRIS. Well, I am thinking about the policy in rendering injunctions; yes. Of course, that is the way we are governed now, entirely.

Isn't it true that they are trying an injunction case right down here in the District of Columbia, for instance, where the real issue is down in Alabama, in Florence and Tuscumbia, and out in Nebraska and Oklahoma? And, in the meantime, there are injunctions issued against those officials and officials here, restraining them from carrying out the law?

Mr. BERGE. Well, of course, that brings up an entirely different question.

Senator NORRIS. No; you are trying to remedy that situation, aren't you, by this bill, as far as it applies to cooperatives getting into the board of trade? But you let the balance of the country stay out. Isn't that a condition that is very much to be regretted?

Mr. BERGE. Well, I think it is. Of course, the theory, if we forget for a moment what our own opinion may be of the rightness of some decisions that some courts have rendered at least the theory of it is that temporary injunctions should not be entered unless there is some irreparable injury being suffered.

Senator NORRIS. I am going now on the fact that the injunctions in the T. V. A. case were decided by the Supreme Court, and they should not have been entered, but in the meantime a great deal of harm was done and these municipalities that were going to get cheaper electricity did not get it at all; and by the very lapse of time the whole thing expired and died down and amounted to nothing—so that the injunction, even though disallowed by the Supreme Court of the United States, had its desired effect all the way through.

And here you have a case where, just the other way, you have started to overrule the board of trade and the board of trade would not let the fellow in, and they finally let him in voluntarily after litigating a couple of years—so that all that palaver went for nothing except that the attorneys got rich fees as they went along.

Mr. BERGE. I would say, Senator, that the fact that there are evils existing under other laws in our procedure, generally, does not, I think, detract from the wisdom of doing what we can with respect to particular laws.

Senator NORRIS. Oh, yes; I agree to that.

Mr. BERGE. I would like to point out one thing that just came to my mind while you were speaking, sir, which I can mention in connection with the procedure of the present Grain Futures Act, section 6 (b)—not this section 6 (b) that you are adding here, but subsection (b) of the old section 6—which gives the Commission the power to order that contract market privileges be denied to certain members who violate the law or attempt to manipulate the price of grain.

Now, there, the procedure, I would say, was not subject to this defect. When the Commission proceeds against a board of trade member, alleging that he has violated the act, or attempted to manipulate the prices of grain, the Commission must first grant him a hearing and consider his argument fully and then, if its order is entered against him, he has a right to appeal. And all the while that is going on he is enjoying his market privileges.

Now, I am not complaining against that procedure; I think it is probably constitutional and it is probably fair, because, after all, the Government makes its mistakes, and if you proceed against a man improperly, I can see that he should not have to suffer for a year or so while the litigation is going on.

But the Government has conducted two proceedings, and an enormous investigation and full hearings, against two members of the Chicago Board of Trade, Arthur W. Cutten and Thomas M. Howell. Both of these men are charged with violating the reporting requirements.

Senator MURPHY. Isn't it true that in one of those cases, the *Cutten case*, the court finally found him guilty of everything charged, but the law did not punish him for it?

Mr. BERGE. That is correct; and I will just mention that in a moment.

But the point I was going to make here was that during the progress of those hearings and the litigation under them—I mean the litigation following the hearings—Mr. Cutten and Mr. Howell have enjoyed full trading privileges.

If the court should ultimately hold that the Commission had jurisdiction in the case, those suspension orders will be made effective. If the Supreme Court ultimately upholds the Circuit Court of Appeals, the order will not be made effective.

But the point is that Mr. Cutten and Mr. Howell are having their day in court without running the risk—well, they are having their day in court before they are suffering any penalty. Of course, the order of the Commission would have been effective long before this had it not been for the litigation. If the Government wins those cases, the orders will then become effective.

Senator POPE. You give the cooperative associations the same privileges that Mr. Cutten and Mr. Howell actually receive? That is what you seek to do?

Mr. BERGE. That is substantially it.

Now, in that *Cutten case*, the circuit court of appeals held that the findings of the Commission were amply supported by the evi-

dence. In fact, there was no substantial dispute on the evidence. The language of the court was substantially stronger than the language of the Commission on the evidence.

But the court held that because of the present-tense use of the verb in section 6 (b) the action of the Commission was without jurisdiction, because they proceeded after the defense had been completed. The *Cutten case* is now pending in the Supreme Court, and on that Court's construction will depend whether or not that order stands up.

Now, Senator, you asked me a question about these provisions regarding registration?

Senator POPE. Well, if you desire to proceed in your own way——

Mr. BERGE. Well, I am really there, now. I haven't taken up these things in the order I thought them out, but I think I have covered everything except that. Suppose I just mention first the registration provisions. I have not given much though to that provision, but I will give just my general reaction to that.

On the registration provisions, I would consider that this way, that the Congress has found—it found when it passed the first Grain Futures Act—that business on boards of trade was affected with a national public interest and subject to lawful regulation. In effect, you licensed the grain exchanges when you passed the original Grain Futures Act. The constitutionality of that as a regulation of interstate commerce was upheld in the *Olsen case* back in 1922, and in the *Olsen case* the court, in effect, said that the prevention of manipulation of grain prices was a legitimate object for the Federal Government and that this act was an appropriate means to accomplish that object.

In effect, I think the court held, and the Government is so arguing, in subsequent cases. They argued it in the *Bartlett-Frazier case*, in the Seventh Circuit Court, involving constitutionality of the reporting requirements, and the constitutionality of the reporting requirements was upheld.

In effect we argued in that case that the prevention of manipulation and the accomplishment of the other valid objects of the act necessitated these reporting requirements; that they were essential to the whole regulatory scheme; and that trading on boards of trade, since the court's decision in the *Olsen case*, was not a business in which a person has an inherent, natural right to engage in the same sense that you have to sell groceries or shoes or raise crops or the other types of business in which it has been recognized from time immemorial that man can engage as of a natural right. That is, the trading in futures, because of its effect on prices in interstate commerce, is subject to regulation and, in effect, subject to licensing under section 6 (a) where you really license the board of trade.

Now, from that you would reason that a man who deals in futures on the board of trade, whether or not he is technically licensed, must comply with the lawful conditions to membership on a board of trade, and that if he does not comply with those conditions the board of trade membership can be denied him.

We think that line of reasoning is essential to taking any effective action under the present section 6 (b) at all, because section 6 (b) in effect says that even though you are not technically licensed unless you obey the rules of the game, you cannot play. And if that procedure under present section 6 (b) stands up constitutionally, it seems to me the effect of it is the same as a licensing provision.

Now, I will have to admit candidly that I am not sufficiently familiar with the minutia of the grain trading on the board of trade to say whether or not all these details here, the requirements to register commission merchants, or that the Secretary can refuse to register——

Senator POPE. Or revoke his license?

Mr. BERGE. Or revoke his license, and unless there is some reason why that sort of thing is unreasonable and quite out of keeping with the general purposes or the general proposition which has been sustained—I don't see where it is constitutionally different from what you already have under section 6 (a) and section 6 (b).

Assuming your major premise that trading on the board of trade is not like selling popcorn on the streets, because of its national implications and effect on prices, I would say that any reasonable regulations in that respect are lawful. And, along that line, I just want to refer to a few cases that we have used in supporting the constitutionality of the old section 6 (b).

I might say that under the Packers and Stockyards Act you have a registration provision for market agencies, commission men, and order buyers, doing business with the public stockyards; and under the Perishable Agricultural Commodities Act you have a licensing provision. I don't remember that it is called licensing—maybe it is registering—but they have to register with the Secretary of Agriculture before they can do business on a perishable agricultural commodity exchange—the fresh fruit and vegetable exchanges.

Now, that act, the Perishable Agricultural Commodities Act, has been in force since 1930. So far as I know, the constitutional question has never been adjudicated as to that act in any court, but it has been applied right along. But the Packers and Stockyards Act, the provision in that act, has been up and it has been squarely upheld.

The *Farmers Livestock Commission Co. case*, out in the eastern district of Illinois, was a case where the Secretary had entered a suspension order suspending market agencies because they had engaged in illegal boycotting, and they challenged the constitutionality of it and the suspension order was upheld; and I would just like to refer to an excerpt of the opinion of the court, which I think was applicable here. This was a three-judge court and the court said that the withdrawal of a license or suspension from operation is merely the withdrawal of a Government permit to engage in a business and which the licensee has no inherent right to engage but in which he may participate only on compliance with the requirements imposed by the Government. If the Government has the right to supervise the business, it may fix the conditions upon which parties may engage therein and may, without the intervention of a jury, withdraw such permission when satisfied that the provisions are being violated.

Now, in that case the constitutionality of that registration provision under the sixth and seventh amendments was questioned—under the sixth amendment guaranteeing trial by jury and criminal proceedings, and the seventh amendment is the amendment with regard to trial by jury in types of actions prosecutable at common law where the amount is more than $20 dollars, I think.

They said that those amendments do not apply. The sixth amendment does not apply in a case which is not technically criminal in nature, and the seventh amendment does not apply except to suits which were common-law actions at the time the amendment was adopted.

So I do not think that the constitutional guaranty of jury trial can be applicable where you have a license that is imposed with respect to a business which you have the right to regulate.

And, in this *Cutten case*, we have to go into that proposition and we have cited numerous State cases where the State could have upheld the constitutionality of State-licensing statutes.

Of course, we all know the licensing of physicians, taxicabs, barber shops, and license to manufacture and sell poison, and liquor licenses, and so forth.

So that it seems to me that your power over grain exchanges under the commerce clause being what it is, the only attack that could possibly be made on such a provision is that it is wholly unreasonable and wholly unrelated to any valid object; and, while I am not sufficiently versed with the minutia of trading to give any final judgment on that, it would seem that there is nothing unique about this type of registration. So far as the provision authorizing the Secretary to issue rules and regulations governing them, I have not given that, that particular provision, any special study.

Senator POPE. The same general principles apply that, if it was a reasonable thing and connected with this matter of legislation, it would be upheld?

Mr. BERGE. I should think so. Well, there are scores of acts which give the administrative body the power to issue regulations to accomplish a stated purpose, if the purpose of the regulation is reasonable and is related to the—if it merely fills in the detail of the expressed congressional purpose, it stands up, and I defended one case under the Packers and Stockyards Act where we had the validity of the regulations challenged, regulations designed to make more specific the prohibition against unfair and deceptive practices of stockyards.

Now, of course, whether the particular regulation is good or not, that depended upon whether the court thought it was a reasonable regulation aimed at a practice which was an unfair and deceptive practice. They upheld it.

Of course, if you make a regulation palpably unrelated to the purpose of the act, it would not be upheld.

But the particular power of issuing regulations to fill in the details of a statute expressed in general terms is certainly a principle of long-standing validity, and I do not think it has been affected by any recent decision—certainly not as a principle.

If there are no further questions, I think that concludes my statement. I appreciate the attention I have had.

Senator MURPHY. Thank you very much.

Mr. GOLDSMITH. Mr. Chairman, before calling on the next witness and finishing section 6 (a) I should like to call the attention of the committee to page 22 of the bill, particularly at line 8. You will note that the provision favoring cooperatives with trial before the Commission before disciplining them only applies in favor of cooperatives having adequate financial responsibility.

There was a suggestion or an inference—it so seemed to me yesterday—that the act did not take care of a situation where the board of trade found it necessary to expel a cooperative because it had gone into bankruptcy or receivership or something of that sort. That question was discussed at length at the time this exact language was included in the House bill 2 years ago, and the board of trade, finding that the cooperative does not have adequate financial responsibility, need not ask the permission of the Grain Futures Administration before expelling that cooperative if the cooperative has so failed.

If the cooperative has not gone into bankruptcy or receivership and the court should find that the board of trade is wrong, then you have exactly the same situation as under the 1922 act. The board is subject to discipline.

But there is nothing in this act as drawn which prevents a board of trade from disciplining a cooperative if it finds it is lacking in adequate financial responsibility.

The second thing I wanted to mention was that I noticed that, pursuant to the request of the committee, I have been informed that Governor Myers, of the Farm Credit Administration, has communicated with the committee, giving his views in particular on section 6 (a), which has just been discussed, and I am wondering if this won't be an appropriate time to have that letter read to the members of the committee.

Senator MURPHY. Yes; I will ask you to read that, if you please.

Mr. GOLDSMITH. I will be glad to. This is a letter from Governor Myers, of the Farm Credit Administration, addressed to the Honorable Louis Murphy, acting chairman, Committee on Agriculture and Forestry, United States Senate:

Dear Mr. MURPHY: Reference is made to the request of your committee for an expression of the views of the Farm Credit Administration with respect to H. R. 6772, "A bill to amend the Grain Futures Act to prevent and remove obstructions and burdens upon interstate commerce in grains and other commodities by regulating transactions therein on commodity futures exchanges, to limit or abolish short selling, to curb manipulations, and for other purposes."

Section 6 (a) (1) of the bill would prohibit a board of trade which was been designated as a contract market from excluding from membership in and all privileges thereon any association or corporation that meets the conditions specified in that section. Owing to the interest of the Farm Credit Administration in cooperative marketing, we are in favor of this amendment. It would provide a practical way of permitting properly qualified cooperative associations to gain admission to grain exchanges, and of ascertaining if such an association should be allowed to continue to be a member of an exchange and enjoy all privileges thereof. It should greatly facilitate the obtaining of memberships on grain exchanges by cooperative associations.

At this time the Grain Futures Act does not provide efficient procedure for passing upon these questions. That act authorizes the Commission erected thereby to revoke the designation of any board of trade as a contract market for failure to admit the duly authorized representative of a cooperative association of producers, but this procedure in practice is subject to protracted delays and is not adapted to prompt and efficient action. Moreover, it always presents the question of whether the punishment is not out of relation to the violation complained of.

Section 6 (a) (1) if it becomes effective, would change the present situation under which a cooperative association may be denied indefinitely the privileges of an exchange, or if admitted may be expelled and then suffer years of litigation in the courts, to one where a cooperative continues to enjoy exchange privileges until the Commission determines that it is not entitled thereto. It

would authorize the Commission to impose such conditions on the retention of membership in and privileges on an exchange, as the exigencies of a given situation might require.

The proposed procedure for passing upon these questions should give fair, prompt, and efficient results.

Sincerely.

Mr. GOLDSMITH (continuing). Mr. Chairman, before calling our next witness I might make this further observation. We have in mind, of course, to close our testimony by around 5 o'clock this afternoon, and we have 8 or 10 witnesses to call. Necessarily they will have to limit their testimony on the average to 10 or 15 minutes, and in some cases it may be desirable for them simply to insert written portions of their statements into the record. They are not very long statements, but they may be too long for the time. With your permission we will adopt that procedure, if necessary.

Senator MURPHY. That will be agreeable.

Mr. GOLDSMITH. Now, going back to another provision—and I am not trying to take this up in chronological order, because it may be impossible because of other engagements of witnesses, but going back to section 4 (e) on page 11, relating to the registration of floor brokers, Mr. M. W. Thatcher, of the Farmers National Grain Corporation, will be one of our witnesses on this matter and perhaps on some other matters on which he would like to give the committee the benefit of his views. Mr. Thatcher.

STATEMENT OF M. W. THATCHER OF THE FARMERS NATIONAL GRAIN CORPORATION

Mr. THATCHER. My name is M. W. Thatcher. I have had many years' experience in actually milling grain, handling flour, and packaged goods, managing large grain businesses receiving grain from the farmers and selling it to the trade. That experience runs over a period of approximately 30 years, which also includes many years' experience in the auditing of the books and accounts of some grain exchanges, mills, terminal elevators, and country elevators; and I have some definite views arising out of that experience. I am familiar with the purposes of the legislation proposed in H. R. 6772 and I am anxious to see the bill passed.

With respect to the registration of commission merchants and floor brokers, my understanding is that the purpose is to see that those commission merchants and floor brokers honestly and faithfully carry out the provisions of the act and the regulations of the Department of Agriculture in connection with it. And I cannot conceive that any floor broker or commission merchant who is anxious to serve his customers and conduct a legitimate business should at all be worried to operate under such regulations.

I believe that the more properly they are regulated and supervised, and the window blinds raised so that the public may see through them and understand the operation of boards of trade, the more confidence there will be on the part of people who are inclined to speculate, to go into the market and speculate, to create the very thing that many of the witnesses say is necessary to provide a broad interest in the market.

I can't conceive, on the other hand, that a continuation of some of the practices heretofore engaged in, and some of which have been

brought to light by the investigations conducted by the Grain Futures Administration, and trials carried on up to the Supreme Court of the United States, I cannot conceive that if those situations continue to arise regularly, an outsider, so to speak, would care to invest his money in a speculative institution so conducted.

You understand that the trader who makes the market fluid is that small fellow who usually is in the market for around 5,000 bushels. It is estimated that of those who speculatively move into the markets, that 50 percent of them have trades that run between 5 and 10 thousand bushels, and very few well-to-do traders, who have plenty of money, are those who move into the market place with great lines, and we believe excessive lines, to the disadvantage of the small traders, by making a profit out of the speculative enterprise of those small traders the great majority of whom engage in a small way and almost invariably on the buying side.

So I believe and my associates believe that if there is anything at all to the argument that it is in the interest of the producer to maintain a free and fluid market by a large volume of trading that that may be best encouraged by conducting the grain exchanges upon a high plane of ethics where the window blinds are up and a supervisory commission, such as the Grain Futures Administration, may live on top of it and give it popularity and integrity before the public.

My own personal views are that if the grain producers of this Nation might have sat in here, and in the House hearings, and heard all of this debate and understood and were well informed about market practices and how prices are made, that if they understood it they would be mighty discouraged in their hopes that they may ever hope to receive cost of production for the grain they produce and ship to these market places.

As soon as the grain price gets so high, because of a deficiency in a crop, the commission merchants and elevator men are happy to move in foreign grains to make money out of it at a great loss to the producer because of depressed prices.

The argument is made here by the proponents of this bill that their system is the one which provides the top price for the producer at a minimum of expense to him and the consumer. Speaking now from the standpoint of wheat, I don't believe they can seriously contend that when trading in futures, if volume in speculation is limited, that if hedges are at a loss of an eighth or a fourth of a cent per bushel, would adversely affect the interest of the consumers, because at another hearing we had before this Senate committee, arising from a resolution introduced by Senator Capper, Senator Capper sought to find out in his resolution why back 3 or 4 years ago in a severe decline in the price of wheat there was not an adequate decline in the price of bread.

At that time Mr. Sidney Anderson, vice president of the General Mills, testified before you—and he is the vice president of an organization which mills in 1 year more wheat than is received in the Chicago market in a whole year—he testified that if the flour were furnished to the baker for nothing it would be difficult to reflect that in the decrease in the price of a loaf of bread.

That you may get a general picture and keep it in your minds of how important it is that Federal supervision may be had of the

movement of the prices, the manipulations to move prices, I hope you will bear with me to make a few statements about that.

First of all, I wish to state that the prices of futures in the market at Chicago, Ill., absolutely is a controlling factor in the price that the farmer receives all over the United States, especially for his wheat and his corn and his oats.

Approximately 95 percent of the trading in wheat on the Chicago Board of Trade is of a speculative character, and 5 percent is for hedging. The average volume of trading in wheat futures in all wheat markets for the past 13 or 14 years was nearly 13,000,000,000 bushels per pear. Ninety-nine percent of that was in the four principal grain markets, and 87 percent or so was at the Chicago market. This volume was 15 times the annual production of wheat during the same period.

On July 20, 1933, there was dumped on that market that day 163,000,000 bushels of wheat futures, which was more than four times all the wheat received at the Chicago market during the year.

In that connection I wish to further call attention to the total volume of trading in the Chicago market, and I wish to submit for the record, without reading it, the billions of bushels that are traded in at the Chicago market each year for the past 13 years, and the amount traded in wheat futures.

And I want to call your attention to the fact that with respect to the total volume of trading in the Chicago market in futures, as compared to the available space in elevators in Chicago in which contract grain may be stored as a guarantee of delivery on futures, that we have the amazing picture that there is only 1 bushel of space in the contract elevators of Chicago for every 1,000 bushels of futures traded in at that market. I wish to submit that schedule for the record in order that you may read it.

Senator POPE. The Government warehouses are, of course, included in that?

Mr. THATCHER. No; the regularly licensed warehouses in which grain is stored, and the certificates of which may be delivered in satisfaction of the contract board are only those under State license. Federally licensed warehouses cannot now qualify.

(The matter referred to follows:)

Comparison of futures trading at the Chicago Board of Trade with availability of regular warehouses at Chicago

	Total grain futures traded at Chicago, billion bushels	Wheat, billions		Total grain futures traded at Chicago, billion bushels	Wheat, billions
June 30—			June 30—		
1922	21.8	12.8	1929	19.3	9.9
1923	18.3	9.6	1930	25.0	16.6
1924	12.8	6.1	1931	14.5	8.3
1925	31.4	16.5	1932	11.6	8.6
1926	24.6	15.8	1933	12.0	9.0
1927	19.9	10.6	1934	13.3	8.4
1928	20.9	9.2	1935	11.4	6.8

Mr. THATCHER. There is approximately 13,000,000 bushels of space for storing grain in Chicago where the receipts of issue may be tendered in satisfaction of a purchase of a "future." Speculation, therefore, in grain futures at Chicago averages about 1,000 bushels of space in a recognized and licensed "regular" warehouse.

With respect to margins—and my experience in that really is only in the spring-wheat area—and considering the protection of customers' money, I will say that up until 1932, at which time I left there and was no longer in the business, that the protection to the customer for his credit balances with the commission merchant, either arising out of margins which he put up for trading or the proceeds from consigned grain which he left on deposit with the commission merchant, and which amounted to millions of dollars, rested entirely on the security in two respects: One, the credit of the commission merchants, and the other a meager $25,000 bond required by the State of Minnesota and which is posted to protect the customer—and in many instances that $25,000 bond is inadequate to meet the liability of that commission merchant to a single country elevator shipper in that area. It is a totally inadequate protection, although testimony was offered here to the effect that that was one of the effective safeguards. There are many court cases to show how far short that bond fell in meeting the credit balances of the customer.

I want to further make the observation that this provision in here for licensing commission merchants and the protection of the customers in regard to balances arising from moneys posted for margins or from proceeds of grain sold for that elevator—and which in the marketing year runs into millions and millions of dollars—the only protection adequate in the interest of those country shippers and the small traders in that spring-wheat area, will rest upon the favorable passage of this bill, which includes the provision, to put all of those operators, and those commission merchants in particular, right squarely in the goldfish bowl where the Grain Futures Administration may look at them and watch them while they are conducting their business.

I am reminded of a very recent failure in Minneapolis of the Carlson Co. It became embarrassed in its financial operations, and it resigned from the Minneapolis Chamber of Commerce and sold its membership and placed itself outside of even the purview of the Grain Futures Administration to look at its books. That was just within the last few months. Shortly after that commission merchant closed his doors, a lawyer sent out a notice to the customers who had margins on deposit there, advising them that he thought he might be able to compose and settle their differences with this commission merchant on the basis of 30 cents on the dollar.

There are many instances where commission merchants have failed and have been unable to pay the country shipper for the proceeds of the grain which that shipper had sent in.

It is a common practice in that area for farmers not to sell their grain, and it runs into millions of bushels and millions of dollars in each marketing year where the farmer has not sold and wants to store his grain. There the country elevator ships in the grain, and the commission merchant sells it and puts the proceeds to the credit of

the shipper who sent in the grain. Meanwhile the farmer, thinking his grain is in storage, is without interest on his money and is paying a cent a bushel per month storage on the grain he thinks is in storage.

That is a very important matter, because those millions of dollars arising from the conversion of the producer's stored grain historically have been part of the working capital of the commission merchants in the area of which I am speaking. The racket imposed upon those farmers storing their grain may never be stopped until this bill is passed and the operations of those commission merchants may be reviewed and audited by the Grain Futures Administration accountant and the racket brought to the attention of the public generally.

How much that practice may be carried on in other parts of the United States I do not know. But when I analyzed it a while back, for the Secretary of Agriculture, as to what was involved in it, and in the presence of one of the witnesses in this room who testified against this bill and who was then an employee of the Federal Government, both of them admitted such a practice as a racket, and said it was the first time that they ever thoroughly understood it.

I will divide that racket into two divisions. The gentleman who testified against this bill and who was then with the Federal Government stated that the interest element was for the first time understood by him and was not fair. There cannot be, in my judgment, out of my experience, too much authority imposed in any legislation, put in any legislation, which will give the Federal Government the right to investigate the practices, at least in the area from which I come; and with respect to the matter which I am now discussing also, so that a practice may be corrected which in history passed has caused hundreds of failures of country elevators throughout the Northwest, has taken from farmers millions of dollars over the years, and which has provided so largely the tremendous amount of credit and operating capital which has been testified here was readily made available by commission merchants to the producers of that area in the marketing of their grain each year. A great part of the capital provided in that area for the moving of grain into the market places was first provided by the sale of the farmers' product which he thought was still in storage, and for which he paid storage fees and suffered loss of interest while waiting to sell his grain.

In the matter of limitation of speculative lines, just briefly, and I have somewhat covered it a little bit ago, the great bulk of the speculative traders who are responsible for this so-called fluid market are the small people dealing in the futures market. And while I do not approve of what goes on and is called legitimate speculation, as most people here do, yet if it is to be continued I think that this should be carried on for the protection of the small fellow who, under the law, has the right to speculate if he chooses; and he ought at least to be provided assurance to sit in a game where the dice are not loaded.

I think when speculative lines have been permitted to run up into the millions of bushels, as has been proved in many cases now being reviewed by the courts, I think in the light of what has been brought out in those cases that it is up to Congress, if you are going to, by law, permit the continuation of these grain exchanges, it certainly ought to be the responsibility of Congress to provide a Federal

supervising authority and some responsibility to provide this small fellow at least a fair break at the gambling place.

With respect to the suggested amendment to grant some exemption to processors for speculation, which was introduced by request, and which Senator Murphy presented and with respect to which the Grain Futures Administration suggested a proviso amendment, I certainly think the Grain Futures Administration proposal was much better than the one introduced by request; but I want to oppose even the substitute provision and stand on the bill as it was passed by the House. Taking Quaker Oats merely as an illustration, they have a line of packaged goods selling at a specific price the year round. What they want to do is to determine their oats cost factor in advance, at the time advertising contracts and rates, packages, and labels, and what not are determined; their interest would be to operate and purchase futures in the market in a fashion so as to hold down the price of oats as near as possible to a factor that would guarantee them in advance that they will make money in selling packaged goods at standard prices the year round. It is bound in their interest to be operated to their advantage, no matter what the price of oats; and their interest in that respect certainly is not the advantage of the man growing the oats.

Senator FRAZIER. It would not make much difference because the price is high enough to protect them anyhow.

Mr. THATCHER. Well, it is their right to make all the money they can, but it would be an unhappy circumstance for the farmers to learn that the Congress of the United States has studiously provided a special provision in a bill of this sort which helps guarantee to Quaker Oats or any processor a guaranteed margin of profit. I think that would be a very unhappy experience.

If you do write it into law, you will merely be putting the producers' associations and the cooperative associations and the Farmers National in the position of trying to gain admission every time there is a conference on such a program in the Secretary's office, in order to oppose in every fashion any such provision or regulation that would give them any such advantage, and we are certainly opposed to it as strongly as we can state it.

There are two other matters, and I will be through. There is the matter of the last few days for trading in a future, as may be provided by the Secretary. Taking July wheat futures in Chicago as an illustration, the Secretary may direct that no trading may occur during the last 3 to 10 days of the expiring future. I certainly am heartily in accord with that and merely need to cite you to the Howell case so often referred to, where there was a corner in corn and prices ran up rapidly in the last few days in the July futures. It was absolutely impossible for any farmer or farmer's elevator or independent dealer in the country to get a carload of corn loaded and into that market in time to receive the advantage of the squeezed up price.

Senator CAPPER. Who profited by the higher prices?

Mr. THATCHER. The poker players. It was not the farmers who profited.

Immediately after that contract expired on the 31st of the month, corn immediately went off about 15 cents a bushel.

But with this provision and a period of time provided in there, and that is still inadequate, in my judgment, because even with 10 days provided it would be quite difficult for a group of farmers or any country elevator operator out in Nebraska or elsewhere, even if they know what is going on in the Chicago market, to get their product in a box car and ship it into the Chicago market and be there in time to enjoy those high prices. A period of 10 days would prove helpful.

I think that the provision is essential as another method of attempting to put an end to so-called corners and squeezes.

With respect to the provision in section 5 (a), "notice of delivery to the buyer", I think that is reasonable and will tend in the same fashion to limit the possibilities of sharp practices at the terminal market. In other words, it is to be assumed that the Grain Futures Administration in following these matters can see a situation arising. They may not, but they may, and if they believe there is an unfavorable situation arising, it will afford an opportunity for the Secretary of Agriculture to call a hearing on such situation to thresh it out in advance and which may preclude some of these debacles to which we have referred.

In closing there are two things I wish to refer to. I have here a chart prepared by the Grain Futures Administration showing the range of prices in May futures, wheat, at Chicago during the last 10 years—the high and the low and the range of prices and the average price.

The average range over the period of years is about 42 cents a bushel.

I don't know whether you want to put this in the record, or whether it is possible; but I should like to call attention to the fact that I have taken this picture of this law of supply and demand as prepared by the Grain Futures Administration and I have noted on each heavy black line—which represents a May future—for each year the world production of wheat for that year, excluding Russia and China. The pencil figures on heavy perpendicular lines represent million bushels, and if you can in any way harmonize the price range of the Chicago May wheat future with the change from year to year of the supply of wheat, you will be able to find out something which, after hours and hours of study, I cannot discern. And it certainly takes out of my mind any confidence or belief that I have ever had that speculation in grain futures is a good thing for the grain producers.

I hope that may be put into the record.

Senator CAPPER. Mr. Chairman, I think it would be a good idea to have that put in the record.

Senator MURPHY. Yes; that may go into the record; and, with the consent of the committee, I understand those charts may be reproduced.

Mr. THATCHER. The large table shows the world production of wheat from the year 1890–91 to 1934–35.

Senator MURPHY. Yes.

(The charts referred to follow:)

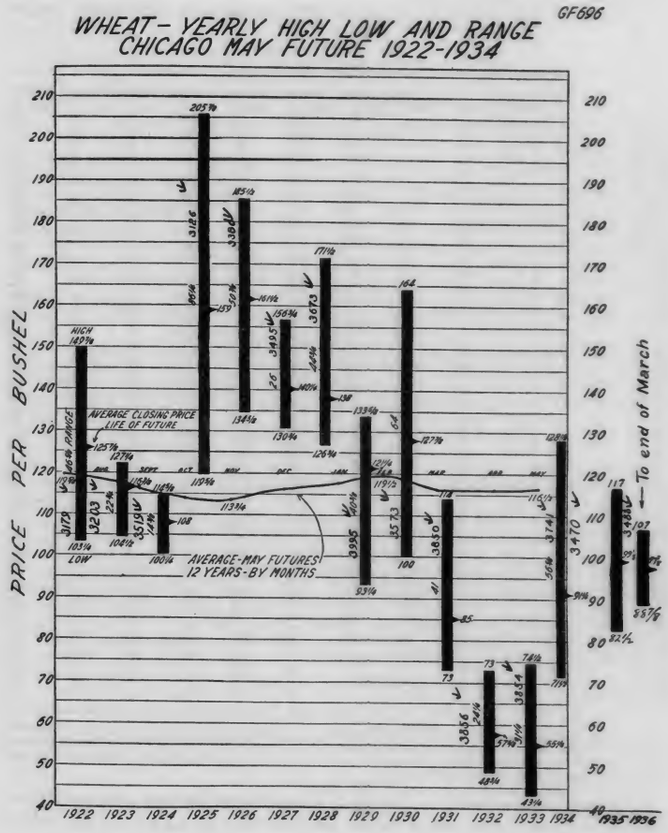

TABLE 6.—*Wheat: Production, world and selected countries, 1890–91 to 1934–35*

[Bureau of Agricultural Economics]

Crop year	World production excluding Russia and China	Northern Hemisphere production excluding Russia and China	European production excluding Russia	Selected countries						
				Russia[1]	United States	Canada	India	Argentina	Australia	France
	Million bushels	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*	*Million bushels*
1890–91	2,018	1,944	1,082	212	449	42	229	31	27	330
1891–92	2,152	2,066	946	173	678	42	257	36	26	215
1892–93	2,226	2,108	1,084	255	612	48	227	59	33	311
1893–94	2,180	2,034	1,073	375	506	41	286	82	37	278
1894–95	2,231	2,120	1,110	355	542	43	271	61	28	344
1895–96	2,172	2,086	1,098	310	542	41	261	46	18	340
1896–97	2,124	2,054	1,151	412	523	33	201	32	21	340
1897–98	1,968	1,866	874	340	606	47	200	53	28	242
1898–99	2,632	2,452	1,209	459	768	63	269	105	41	365
1899–1900	2,416	2,246	1,147	454	655	57	255	102	40	365
1900–01	2,297	2,151	1,134	423	599	56	200	75	48	326
1901–02	2,516	2,398	1,135	428	763	85	265	56	39	311
1902–0	2,537	2,394	1,240	607	687	94	227	104	12	328
1903–04	2,739	2,498	1,305	621	663	78	298	130	74	363
1904–05	2,529	2,293	1,154	667	556	69	360	151	55	300
1905–06	2,754	2,519	1,266	636	706	106	283	135	69	335
1906–07	3,026	2,771	1,398	543	741	126	320	156	66	329
1907–08	2,694	2,419	1,205	571	629	93	317	192	45	381
1908–09	2,618	2,357	1,204	628	643	112	229	156	63	317
1909–10	2,860	2,593	1,263	846	684	167	285	131	90	359
1910–11	2,815	2,533	1,218	836	625	132	360	146	95	253
1911–12	3,087	2,801	1,366	563	618	231	376	166	72	322
1912–13	3,140	2,817	1,307	801	730	224	371	187	92	334
1913–14	3,129	2,882	1,322	1,028	751	232	368	105	103	319
1914–15	2,884	2,649	1,096	[2] 834	897	161	312	169	25	283
1915–16	3,520	3,124	1,151	[3] 827	1,009	394	377	169	179	223
1916–17	2,717	2,436	1,020	[4] 531	635	263	323	84	152	205
1917–18	2,693	2,285	865	622	620	234	382	235	115	[5] 135
1918–19	2,935	2,631	959	--------	904	189	370	180	76	229
1919–20	2,809	2,504	900	--------	952	193	280	217	46	187
1920–21	2,968	2,612	949	320	843	263	378	156	146	237
1921–22	3,179	2,797	1,224	205	819	301	250	191	129	323
1922–23	3,203	2,845	1,045	389	847	400	367	196	109	243
1923–24	3,519	3,087	1,257	481	759	474	372	248	125	276
1924–25	3,126	2,715	1,058	480	840	262	361	191	165	281
1925–26	3,380	3,013	1,397	764	669	395	331	191	115	330
1926–27	3,495	3,045	1,216	898	834	407	325	230	161	232
1927–28	3,673	3,200	1,274	792	875	480	335	282	118	276
1928–29	3,995	3,419	1,410	807	913	567	291	349	160	281
1929–30	3,573	3,206	1,451	694	822	305	321	163	127	337
1930–31	3,851	3,347	1,360	989	890	421	391	232	214	228
1931–32	3,856	3,380	1,436	753	932	321	347	220	191	264
1932–33	3,854	3,331	1,492	744	746	443	337	241	214	334
1933–34	3,790	3,244	1,749	1,019	529	282	353	286	177	362
1934–35	3,470	3,024	1,535	1,117	497	276	351	241	133	339
1935–36 [6]	3,488	3,120	1,547	--------	603	274	363	144	140	279

NOTE.—Production figures refer to the year of harvest. Harvests of the Northern Hemisphere countries are combined with those of the Southern Hemisphere which immediately follow; thus, for 1934–35 the crop harvested in the Northern Hemisphere countries in 1934 is combined with the Southern Hemisphere harvest which begins late in 1934 and ends early in 1936.

[1] Includes all Russian territory reporting for years named.

[2] Total Russian Empire exclusive of the 10 Vistula Provinces of Russian Poland and the Province of Batum in Transcaucasia.

[3] Exclusive of Russian Poland, Lithuania, parts of present Latvia and Ukraine, and 2 provinces of Transcaucasia.

[4] Beginning with this date estimated production is within present boundaries of the Union of Socilaist Soviet Republics, excluding Turkestan, Transcaucasia, and the Far East, which regions in 1924 produced 51,706,000 bushels and, in 1925, 58,000,000 bushels.

[5] Beginning with this date production is within post-war boundaries and therefore not comparable with earlier years.

[6] Preliminary.

Mr. THATCHER. In closing, I have made a summary of some of the important cases of malpractices on the Chicago Board of Trade from the records of the Grain Futures Administration, and I have summarized them. I should like to offer them and hope you will receive them in the printed record of these hearings.

Senator MURPHY. Yes; they will be quoted in the record following your testimony.

Mr. THATCHER. Thank you very much. I want to thank you for your courtesy.

(The matter referred to follows:)

NOTED CASES OF MALPRACTICES UPON GRAIN EXCHANGES

NO. 1. ARTHUR W. CUTTEN—ARCH WHEAT GAMBLER

The Grain Futures Commission (Attorney General, Secretary of Commerce, and Secretary of Agriculture) found:

During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short, by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn, or oats, and 200,000 bushels of rye or barley.

Respondent in 1930 and 1931 had knowledge of the reporting requirements.

Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

During the year 1930 respondent did not make any reports to the Grain Futures Administration.

On approximately 130 days during 1930 respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

On approximately 119 days during 1930 respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

During the year 1931 respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

During the year 1931 there were a great many days on which respondent made no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

On approximately 110 days during 1931 respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

"On many days during the years 1930 and 1931 the respondent, accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the act and regulations made pursuant thereto.

"During the year 1931 the respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him, contrary to the act and regulations made pursuant thereto.

"Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain.

"The Commission also made conclusions wherein it found that Cutten's conduct constituted a violation of the Grain Futures Act and the rules and regulations made pursuant thereto, and that an order should be entered that all contract markets refuse all trading privileges to him for a period of 2 years. The order, which is here assailed, was thereupon entered."

Cutten appealed from the findings and order of the Commission. The United States Circuit Court of Appeals, Docket no. 5467, October term, 1935, decided:

"Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

"Petitioner argues that the power to suspend a trader must be found in section 6 (b), and an examination of said section makes it imperative that the trader accused of the wrongdoing condemned by the act be one who 'is violating any of the provisions of the act, or is attempting to manipulate the market price of any grain.' In other words, petitioner contends that any violation of the Grain Futures Act of which he was shown to have been guilty was committed some 2 years prior to the institution of these proceedings, and consequently he is not within the purview of said section 6.

"The determination of the appeal, therefore, turns upon the use of the words 'is violating' and 'is attempting to manipulate' in said section.

"It is admittedly rather difficult to understand why Congress would, when dealing with the punishment of a board, include past as well as present violations, whereas in section 6 (b), when dealing with the punishment of the individual trader, it provides for punishment only when such person 'is violating' or 'is attempting to manipulate the market.'

"We are not, however, persuaded that the words of the statute here used can or should be so stretched as to include past violations which were committed and completed 2 years before the complaint was filed.

"We cannot ignore the fact that Congress is dealing with contract markets provided for cancelation of rights if violations of regulations had occurred, whereas in the next section the right to cancel a member's privilege on a contract market was limited to instances where the member is violating a regulation. While respondents' counsel has ably argued that the Commission should have the power to suspend for past transgression and without such authority the section is sterile—yet he has not met the stubborn and inescapable fact that Congress has spoken in two successive sections. In one it expressly included past as well as present violations and in the next section specified only exsiting violations as ground of suspension. To extend the latter section to the breadth of the former would be usurping the function of Congress.

"Under such conditions it is for Congress to amend its legislation, if it deems it wise and desirable so to do, not for courts to do so by judicial construction.

"The order is reversed."

COMMENTS ON THE CUTTEN CASE

For many years the name of Arthur W. Cutten has been a headliner in grain-market news. When business was lagging in the outlying offices of Chicago commission firms, all they had to do was to whisper that Cutten was buying wheat and the orders would start rolling in from suckers everywhere who believed they were getting in on a bonanza. Seldom, if ever, did they mention Cutten as selling. He was pictured as a great friend of the farmer, always on the buying side and always helping to boost prices. So anxious was he to establish his reputation along these lines that in 1932 he engaged a talented writer, Beyden Sparkes, and published a series of articles in the Saturday Evening Post proclaiming his virtues as a farm benefactor, and venting his hatred of the Grain Futures Administration and the United States Government in general because of its interference with his speculative operations.

The real nature of these operations was finally disclosed when the Grain Futures Administration, in conducting a general survey of the market in 1932, discovered on the books of commission houses a number of accounts belonging to Cutten, but carried in the names of relatives and friends. An investigation followed, resulting in charges brought against Cutten for violation of the Grain Futures Act occuring in 1930 and 1931. The trail of his operations was traced through 35 different accounts and eight different commission firms.

It will be recalled that during this period the United States Government, through the Federal Farm Board, was spending millions of dollars in trying to sustain a fair price for wheat. Readers of Mr. Cutten's articles in the Saturday Evening Post might have expected to find Cutten assisting the Government in these circumstances. Evidence developed at the hearing in this case brought out the true facts, namely, that over the entire 2-year period he was a consistent short seller. His short sales amounted to more than 73,000,000 bushels. He was short at one time 7,525,000 bushels. In 1930 he was short 79 percent of the time, and in 1931 he was short 89 percent of the time.

According to the record of the hearing in the Cutten case, Secretary of Agriculture Arthur M. Hyde had received some indication that Mr. Cutten was operating on the short side of the market early in 1930. On February 23, 1930, Secretary Hyde sent a telegram to Mr. Cutten reading as follows:

"It is reported to me that you have been operating on the bear side of the grain market and that these operations have contributed to the collapse of the market. I have no right or authority to suggest any course to any businessman in his own business, but just in the public interest, if you could abandon such a course it would help many thousands of people in a time of distress. If the report is not true then disregard my anxiety in the matter."

To this telegram Mr. Cutten, on February 25, 1930, replied as follows:

"Your wire received and your information misleading. I have not been very active in the markets. My activity for last 2 weeks consisted of selling about 400 privileges each way. I don't think I have sold a bushel of wheat during tha time except to protect the trades put."

The record further shows that on the very day that Mr. Cutten sent the above telegram to Secretary of Agriculture Hyde he was short Chicago wheat futures to the extent of nearly 4 million bushels.

The Commission under the Grain Futures Act found Cutten guilty of making false reports of his transactions and failing to report and of attempting to manipulate prices. The case was appealed by Mr. Cutten to the circuit court of appeals for the seventh circuit. That court sustained the Commission on the facts and condemned severely his operations.

Speaking of the evidence, the Court said:

"It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future."

In passing on the law, however, the court, with apparent regret, agreed with Cutten's counsel that the present-tense language in section 6 (b) of the Grain Futures Act could not be involved as to completed acts of violation. The language of section 6 (b) is to the effect that if the Secretary of Agriculture has reason to believe that any person is violating the act or is attempting to manipulate prices, he may initiate certain proceedings.

While the *Cutten case* is still pending before the United States Supreme Court on petition for certiorari, it should be noted that the penalty which Mr. Cutten would suffer, even though the Supreme Court should overrule the circuit court of appeals, is denial of trading privileges on contract markets for a period of 2 years. In other words, having prostituted the wheat markets for 2 years to the detriment of producers and the public generally, and having taken millions of dollars out of it for his own profit, the greatest penalty that he would suffer is a 2-year vacation during which he may not trade in grain futures but during which he is free to speculate in cotton and in commodities not covered by the Grain Futures Act, as well as in the stock market, to which he is no stranger.

Under this bill, H. R. 6772, there is provided a penalty and the only kind of penalty which will stop operations of the kind in which Mr. Cutten was engaged. A 1-year term in the Federal penitentiary, it is thought, will look less

inviting to speculators of this class than a possible 2-year world cruise, affording opportunity to spend a part of the ill-gotten wealth and also to figure out some new scheme for milking the market when the 2-year suspension period has expired.

As a direct result of the *Cutten case*, the Internal Revenue Bureau discovered apparent failure on the part of Cutten to comply with internal-revenue laws applying to income tax. It is understood that suits are underway to collect from Mr. Cutten sums aggregating over a million dollars. So, even if Cutten suffers no adequate punishment for what he has done to the grain markets, the proceedings against him have been productive of some very worth-while results.

CASE NO. 2

In October 1935, the E. F. Carlston Co. of Minneapolis, Minn, ceased business. It withdrew from the Minneapolis Chamber of Commerce, thus placing itself outside of the reach of the Grain Futures Administration. Carlston refuses to permit an examination of the books. Farmers and country elevator companies had margin money or deposit money intrusted to Carlston. He used, what should have been trust funds, such money of others for his own account. It is incredible that throughout time and even now members of grain exchanges are permitted to receive margin funds and use them for the conduct of their own business—speculation or what not. We know that many patrons are suffering from this Carlston failure and, so far, have received nothing but an opportunity to settle for 30 cents on the dollar.

CASE NO. 3. ROSENBAUM GRAIN CO., CHICAGO

This company was suspended from the Chicago Board of Trade last year. A committee of the Chicago Board of Trade arbitrarily closed out all customer's accounts of Rosenbaum Grain Co. Total margins approximated $750,000 and the customers are waiting for what may be offered to them after this company has completed its journey via 77-B and settlement shall have first been made with an army of high-priced attorneys.

CASE NO. 4. HOWELL CASE

Howell effectuated a corner in 1931 July corn. With some associates he accumulated a long interest in corn futures, 8,435,000 bushels. In his own name he carried 5,000,000 bushels and the remainder in the names of his associates—including his wife, daughter, brothers-in-law, and friends. These holdings constituted 57 percent of the total open July corn contracts as at June 30, 1931. At the close of business, July 30, 1931, he still held 9,290,000 bushels—85 percent of the total open contracts. In addition to the purchases of futures, Howell purchased actual corn totaling 322,330 bushels—further reducing actual corn in the hands of others at Chicago—thus making it more difficult for others to deliver actual corn against his holdings of July futures. He squeezed those who had sold the market short—which resulted in a price advance of corn during the last 3 days of July from 58¾ to 72⅝ cents per bushel.

It is contended by some that such a situation as this is helpful to the farmer. The contention is erroneous because the country price does not follow the squeeze of a future during its closing days. Country elevators cannot deliver corn on contract at a contract market during the last day or two of an expiring future. The rules of the game, time for travel and mobility of transportation facilities preclude the possibility of a squeezed-up price being an advantage to the country elevator and farmer-patron—whereas the squeeze price of Chicago corn was upped to 69.8 cents per bushel on July 31, 1931, the August 1 price for the same grade was 61.8 cents and on August 25 it was 41.8 cents.

The notorious *Howell case* is still pending in the circuit court of appeals on much the same question of law as was involved in the *Cutten case*, and Howell will likely be successful—as was Cutten—because of the tense of a verb in the Grain Futures Act. We give full recital of this point in the *Cutten case*.

NO. 5. FAILURE, ETTINGER, AND BRAND, CLEVELAND-CHICAGO

One of the worst price breaks of record in grain-futures markets occurred in July 1933. The break was about 30 cents per bushel for wheat—July 19–20, 1933. Ironically, this was at the time Secretary of Agriculture Wallace announced the imposition of a processing tax on wheat in the amount of 30 cents per bushel to equalize the difference between the cash price of wheat to the farmer and the parity price sought under the Agricultural Adjustment Act.

This unwarranted drop in price was the direct result of excessive speculation in wheat. Central and southwest wheat was going to market at this time. Ettinger and Brand had accumulated a speculative long interest in wheat, approximately 20,000,000 bushels, for a clique of gamblers. The accounts were carried under fictitious names, so false reports were made to the Grain Futures Administration.

Following the price debacle referred to, the Grain Futures Administration found these fictitious transactions and analyzed this orgy of speculation. Ten traders controlling 15 large speculative accounts had, during a 2 weeks' period prior to the crash, built up their large speculative line of purchased futures. They started to liquidate their holdings for profit taking, then dumped their huge holdings onto the market with the inevitable crash and loss of millions to farmers who were then marketing their current harvestings. Other interests, large and small, went along with the crash. (See Annual Report of Grain Futures Administration, pp. 3, 4, and 5.)

Of all the moral crimes and losses to hundreds of thousands of farm families—millions of dollars lost—the only basis for an action by the Federal Government against these speculators was that for "reporting falsely." The punishment in this case was suspension from all contract markets and trading privileges for 6 months beginning December 1, 1934.

Under the pending bill (H. R. 6772), excessive lines of speculation would be under control and imprisonment and fines could be imposed for such malpractices recited in this case.

There are many other notorious cases which could be recited, but certainly those presented are sufficient to move the United States Senate to immediately enact H. R. 6772.

It is interesting to note that in most of these cases the grain exchanges do not move to stop known malpractices nor to suspend guilty members until the cases are so notorious and rank that, out of fear of public condemnation and action by Congress, it appears necessary to move to preserve their exchanges.

Senator MURPHY. Your next witness, Mr. Goldsmith?

Mr. GOLDSMITH. Mr. Chairman, I would like to refer the committee to page 19 of the bill, on which the Secretary of Agriculture has recommended that an additional paragraph, subparagraph (7), be added after line 7. That has already been referred to in these hearings, and it would require a contract market licensed under the act to take regular receipts of a Federal warehouse along with the State warehouse. I had hoped the time might afford a more detailed discussion of the legal points involved, because, according to the testimony of my friend, Mr. Howard Ellis, representing the Chicago Board of Trade, no one has any objection to a Federal warehouse being made regular along with the State warehouses, except that there are serious legal difficulties in making a Federal warehouse regular, in that probably such a regulation would be unconstitutional, since Congress has not preempted the field, and that the board of trade would be faced with an unfortunate dilemma at which it would find itself, on the one hand, facing prosecution under the Federal act and, on the other hand, endangered and losing its charter under the State law if it did not comply with the regulations of the State of Illinois.

Time will not afford a discussion of the circumstances under which the Chicago Board of Trade petitioned the Illinois Commerce Commission for permission to make Farmers National, the Rock Island House, in Chicago regular. Suffice it to say for this purpose that I have gone on record in a communication to the then Solicitor of the Department of Agriculture, Mr. Seth Thomas, and conferences have been had with members of the Department as to the proper

procedure to be adopted; and it was agreed that no test case of the nature suggested by Mr. Ellis should be brought until such time as the law was clarified.

Our position very briefly was that there was no requirement in the rules of the board of trade to make farmers national warehouse regular, and therefore that the Illinois Commerce Commission could not have any purported jurisdiction over the question, and that the board of trade under the rules should have been or caused to be made a Federal warehouse regular. But, waiving that, the question then arises as to whether this Congress has the constitutional authority to require that a federally licensed house be made regular along with the State houses.

Just a word as to the meaning of the word "regular." A regular warehouse is one whose receipts are accepted against futures contracts on the board of trade. They must be located in Chicago. They must have certain definite storage qualifications. They must be located on the water, and so forth.

And if a person wants to deliver on a futures contract and does not have a regular warehouse receipt, he must load his grain out during the last few days of the delivery months, which costs money, and deliver on track in Chicago—which means that if the producer under existing circumstances elects to store his grain in a federally licensed house, he finds himself with the additional burden of the charge for loading out in order to deliver his grain.

Now, I take it that the theory of the United States Warehouse Act of 1922 was that a warehouseman should be permitted to choose as to whether to go under State or Federal license, and lying behind that was the theory that the producer might find that his interest would be better served by having grain in a Federal house rather than in a State house, in that the regulations might be more rigid or not strict enough in some States.

In any event, the idea was that he should have the right to Federal protection; and if he is mistaken in respect to having a Federal house to a State house, as someone pointed out, the producer is entitled to make some of his own mistakes.

It is not a question local to Chicago or to Illinois as to whether or not this Congress should require that the Federal receipts be made regular. There are many Federal warehouses located in Omaha, Nebr., and in many other parts of the United States. And, unless such regulation is adopted, their grain exchange will be free to decline those Federal receipts and declare that Federal receipts shall not be accepted as regular for delivery of grain.

I understand—and I have not had the opportunity to verify this statement—that the States of Missouri and Minnesota today will not permit the delivery of receipts issued by a Federally licensed house on board of trade contracts.

A further suggestion was made that a corporation operating a warehouse might avoid the difficulty by going under both Federal and State licenses. I am informed that it is absolutely impossible to go under joint license in the State of Illinois. I am informed that one cannot issue a receipt which is partly a Federal receipt and partly a State receipt. It must be fish or fowl, one or the other. Grain can be inspected and the receipt issued either by the Federal or the State agency.

Of course, the warehouseman could put part of his house under Federal and part under State—just as has been the practice in Chicago to keep part of the house private and part public, so that they can mix in the private part of the house. But I know of no way in which a corporation could go under this proposed joint license.

Now, in addition to the other reasons which may have motivated Farmers National to put most of its warehouses under Federal license—and, by the way, it has warehouses located in other communities which are under Federal license—but, in addition, Farmers National might feel that the protection of the Federal law was a safeguard to it by way of more rigid inspection and supervision, and to its producers in turn.

Then there existed another reason in the State of Illinois, to wit, that under the Illinois laws, as construed by the Supreme Court of the State of Illinois, that it was impossible for a warehouseman to store his own grain. As Mr. Ellis stated, it is essential as part of the marketing of grain to store the grain of producer members.

In Illinois, those houses under State license resorted to what is known as a "go-to-store" transaction in order to store their own grain. The grain would be carried under the name of a broker who would be paid a commission for his alleged service or for his service in that regard.

When Farmers National started to operate in the Chicago market, we as their counsel advised that there was grave doubt as to the propriety of any such arrangement as a "go-to-store" transaction under Illinois law; that there might be some question as to the validity of their warehouse receipts. But, more important, there would be a definite violation of law; and we, as their counsel, would not permit them to enter into any such arrangement for storing their own grain.

The new act passed by the Legislature of the State of Illinois, in my judgment, cannot correct the situation as it exists in Illinois under State license. Though the criminal sanctions may be removed it is still a violation in Illinois for a house to undertake to license and store it own grain.

Now, it was indicated, among other reasons, for the board of trade not wanting this provision passed, that there is serious question as to the validity of warehouse receipts issued in Illinois by a federally licensed house storing its own grain. My only answer to that will be that the banks of these United States, including banks of New York, Chicago, and almost every grain center at least have loaned money on Federal receipts of Farmers National Grain Corporation, and other Federal receipts to the amount of millions of dollars, including grain stored with our Rock Island house, in Chicago, under Federal license.

It was also suggested that the Illinois Commerce Commission had held that under Illinois law it was impossible to operate a public class A house in Chicago, under Federal license. I have reviewed their decision carefully, of which I have a copy, and their statement was that such a house could not be made regular; and no steps have been taken at any time to prevent Farmers National Grain Corporation from selling grain as a class A house in the Chicago market.

Now, the last argument, it seems to me, is not valid. The argument seems to be this, that Congress cannot preempt the field and

still leave the warehouseman a choice as to whether he will come in under State or Federal regulation. It seems to be conceivable that Congress could require that a warehouseman's receipts be made regular under futures-market contracts. But they cannot say that the warehouseman cannot choose between State and Federal; and, if he chooses Federal, he shall not be interfered with by the State. In other words, it is stated that Congress has to go whole hog or none.

Congress certainly can preempt the field in regard to a class of activity. It did not have to, in regulating the carriers, regulate all carriers—for instance, where the horse and buggy is driven by a farmer which happened to be in interstate commerce because it happened to cross State lines.

And I will say to this committee that I am of the very firm belief that it is a specious argument to maintain that Congress can require that only Federal houses be regular and that they cannot have the option of choosing. As a matter of fact, Congress has already gone that far, or nearly that far—and this might be debatable—in the 1931 amendment to the United States Warehouse Act. Congress found that after passing the 1922 act, that there was undue interference with federally licensed houses, and provided in the 1931 amendment that while the Secretary of Agriculture might cooperate with State authorities, that his jurisdiction should be exclusive and free from State control.

It was our belief that this would cover the situation of making Federal houses regular. But since the language was not as precise as it might be, we felt that that question did not need to be left open any further.

The State of Washington, sometime after the enactment of the 1931 amendment, attempted to require a Federal house to go under State license; and I have for the record a copy of a letter written by the then Solicitor for the Department of Agriculture under the Hoover administration, in which he discusses the 1931 amendment and finds it is constitutional and advises the Chief of the Bureau of Agricultural Economics that Federal houses should not register with State authorities.

Now, one brief word on the dilemma that is being faced by the Chicago Board of Trade. Their view, as stated, is that they either be subject to go under Federal law or under State law. Frankly, I don't believe that there will be any attempt to take away the charter of the Chicago Board of Trade if it obeys the Federal law, either as a practical matter or as a matter of Illinois law.

But, if they face a dilemma, let us look at the dilemma of the Farmers National Grain Corporation or any other such group that wants to avail itself of a law that this Congress has passed. This Congress has said that warehousemen may operate under Federal license and, under the 1931 act, that they shall not be interfered with by State authorities. Now it finds itself in the dilemma where if it wants to give the producers the benefit of Federal supervision, it must handicap them by requiring them to pay a higher price on the Chicago markets.

One last word as to the justification of this proposed amendment to this particular bill. The Commodity Exchange Act is, of course, an amendment to the Grain Futures Act of 1922, which recites in its preamble its purposes to remove obstructions to interstate commerce by preventing squeezes, manipulations, and so forth—and I am paraphrasing, not quoting here. Obviously, if we are to prevent manipulations and squeezes there are two items of equal importance to be considered. We are only too apt to look at the first and disregard the second.

The first is the making of the contract, limitations on size, how the contract shall be carried out, so far as the executory contract is concerned.

The second and equal important question is performance of the contract, the delivery of the grain against the futures.

Now, it has been said time out of mind in the course of hearings to which I refer that the storage space in the Chicago market was grossly inadequate for the amount of grain traded in there. To close up several million bushels of capacity, as is done in the case of the National, refusing to make the account regular, makes that situation all the worse. There is less storage space for the delivery of grain. I recall that long before this question arose there was discussion in Chicago of the serious possibility of La Salle Street being flooded with grain because during a particular squeeze there would not be enough storage space, and that there would not be enough cars on which to place the grain. Surely Congress has it within its power in preventing an obstruction to interstate commerce to see that all available space is made available and that a warehouseman is not penalized and the market system in turn injured because he advantages himself of a law passed by this Congress in 1922 and confirmed again in no uncertain terms in 1931.

With the permission of the chairman, I should like to have this very brief memorandum on the subject that I have discussed made a part of the record. I have signed the memorandum.

Senator POPE. Very well; it will be made a part of the record.

(The paper referred to follows:)

MEMORANDUM RE PROPOSED AMENDMENT TO THE COMMODITY EXCHANGE ACT, H. R. 6772, BY ADDING A NEW SUBPARAGRAPH "(7)" TO SECTION 5 (A)

Henry A. Wallace, Secretary of Agriculture, in a letter to Senator E. D. Smith, chairman, Committee on Agriculture and Forestry, United States Senate, dated June 27, 1935, has recommended amendment of the Commodity Exchange Act, H. R. 6772, by adding thereto, on page 19, following paragraph (6) of section 5 (a), another subparagraph, as follows:

"(7) require that receipts issued under the United States Warehouse Act (U. S. C., title 7, secs. 241–273) shall be accepted in satisfaction of any futures contract made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

The Secretary of Agriculture states as to this amendment in his letter to Senator Smith:

"This additional provision is necessary to remove unfair discrimination against Federally licensed warehousemen who desire to make their receipts tenderable on futures contracts upon the same terms and conditions imposed on State-licensed warehousemen. This requirement is in accord with the spirit and purpose of the present United States Warehouse Act."

This memorandum concerns itself solely with the question of the constitutionality of the proposed amendment.

For its practical need "to remove unfair discrimination against Federally licensed warehousemen", see official report of proceedings before the Agricultural Adjustment Administration in the matter of the hearing with respect to a Code of Fair Competition for Grain Exchanges and Members Thereof, Docket No. C–298, hearings held in Chicago, Ill., May 15, 16, and 17, 1935, passim, but particularly pages 9–10, 147–149, 163–171, 198, 216, 463–465.

The commodity exchange bill is an amendment to the Grain Futures Act of September 21, 1922 (U. S. C. A., title 7, secs. 1–17). The Grain Futures Act recites in part as a reason for its passage "that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control which are detrimental to the producer or the consumer and the persons handling grain and products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

The two essential elements to a futures transaction on an exchange are (1) the making of the contract for future delivery and (2) the delivery of the grain itself against the contract. Manipulation and squeezes can be caused as readily by unwholesome delivery conditions as by improprieties in the making of future contracts. It is a matter of common knowledge that Chicago does not have adequate modern terminal-elevator facilities which are "regular" (a regular elevator is one from which delivery of grain may be made on futures contracts under the rules of the Board of Trade of the City of Chicago). Congress has already decided that for the protection of interstate commerce a public warehouseman should be permitted to choose as to whether he operate under State license or under Federal license free from State interference (U. S. Warehouse Act, as amended, U. S. C. A., title 7, secs. 241–273, particularly section 269, as amended). It is proper that Congress, in pursuance of the same policy, prevent unreasonable fluctuations caused by squeezes due to a dearth of delivery space by requiring that Federally licensed elevators be made regular along with State elevators.

This control over contract markets, being just as essential as regulation of other features of futures trading, is sustained by the reasoning of the Supreme Court of the United States in *Board of Trade* v. *Olsen* (262 U. S. 1), holding the Grain Futures Act of 1922 to be constitutional.

It is submitted therefore that Congress properly can, in the Commodity Exchange Act, require that warehouses under Federal license be recognized as "regular" by the exchanges for delivery of commodities on futures contracts, as this requirement is for the purpose of removing an obstacle to the execution of the national policy manifest in the provisions of the Commodity Exchange Act to prevent manipulation in marketing of commodities in interstate commerce. This is implicit in the *Federal Compress & Warehouse Co.*, v. *McLean* (291 U. S. 17). While the court upseld the imposition of a nondiscriminatory State excise tax upon a Federally licensed warehouse, it stated:

"The national government has not assumed to tax the business or to exercise any control over the taxation of it by the State. The State does not tax the license itself and the tax upon petitioner's business, applied without discrimination to all similar businesses whether licensed or not, does not impair the control which the Federal authority has chosen to exert. The mere extension of control over a business by the National Government does not withdraw it from a local tax which presents no obstacle to the execution of the national policy."

See also *Young & Jones* v. *Hiawatha Gin and Manufacturing Co.* (17 Fed. 2d, 193, 194), in which a Federally licensed warehouse was referred to as "an instrument of interstate commerce"; *Stafford* v. *Wallace* (258 U. S. 495, 525); *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Shafer* v. *Farmers Grain Co.*, (268 U. S. 189).

There is nothing in *United States* v. *Hastings* (296 U. S. 188), which challenges the constitutionality of the proposed amendment. The Court in that case merely held that Congress did not intend that the stealing of a commodity from a Federally licensed warehouse should be considered a crime unless it could be shown that the commodity was moving in the channels of interstate commerce.

It is to be noted that the proposed amendment would not require that public warehousemen operate under Federal license in order to have their receipts regular for delivery on contract markets. Each warehouseman may choose for himself whether to operate under State or Federal license. All that the amendment will do is to make certainly available for delivery on future contracts grain stored in warehouses under Federal license and thus provide additional storage space to prevent squeezes due to inability of sellers of grain at times to make delivery owing to insufficient regular storage space.

The opinion of the Illinois Commerce Commission denying the right of the Board of Trade of the city of Chicago to amend its rules so as to make a Federal house regular is apparently based on the assumption that the United States Warehouse Act, as amended, is unconstitutional. If the right of Congress to permit Federal warehousing is to be assailed, it is submitted that the Supreme Court of the United States should be permitted to pass upon a system of Federal warehousing which lends a maximum of stability to the movement of grain in interstate commerce. Therefore, the proposed amendment to the Commodity Exchange Act should be adopted even if constitutionality may conceivably be challenged.

As heretofore stated attack on the proposed amendment will probably assume invalidity of the United States Warehouse Act as amended insofar as the Secretary of Agriculture is given exclusive jurisdiction over Federal warehouses which choose to operate under Federal license. As to the constitutionality of this act as amended, there is attached hereto as exhibit 1 letter opinion from Elton I. Marshall, solicitor of the Department of Agriculture, to Mr. Nils A. Olsen, Chief, Bureau of Agricultural Economics, dated June 23, 1931.

In conclusion, the proposed amendment to the Commodity Exchange Act is constitutional within the doctrine of the Olsen case as a proper exercise by Congress of its power under the commerce clause to prevent improper burdens upon the marketing of commodities in interstate commerce.

April 23, 1936.

IRVING B. GOLDSMITH,
Counsel, Farmers National Grain Corporation.

EXHIBIT I

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C., June 23, 1931.

Mr. NILS A. OLSEN,
Chief, Bureau of Agricultural Economics.

DEAR MR. OLSEN: Reference is made to Mr. Yohe's memorandum of May 27 asking to be advised whether a warehouseman operating under the United States Warehouse Act in the State of Washington is obliged to take out a license under the State act and file a bond with the State director of agriculture. Consideration of the memorandum has been deferred pending the submission of a copy of the statute recently enacted by the State of Washington, chapter 46, approved March 18, 1931, and a copy of an opinion by the State attorney general to the State director of agriculture under date of May 20, 1931.

With Mr. Yohe's memorandum there was submitted copy of a circular letter of May 20, 1931, sent out by the State director of agriculture "to all public warehousemen of the State of Washington" the concluding paragraph of which reads:

"You are therefore advised that any person or corporation doing a public-warehouse business in the State of Washington must have a State license or be subject to penalties provided in the State law."

As a basis for this advice the State director quotes the following from the opinion of the Attorney General above cited:

"You should insist upon warehousemen taking out a State license and subjecting themselves to the regulatory provisions of this (the State) act."

The circular letter of the State director does not quote or otherwise refer to the final sentence of the attorney general's opinion that:

"Any warehouses which act merely as purchasing agents for nonresident buyers or which handle only products designed for shipment out of the State would be subject to the Federal and not the State act."

The question as to the necessity of filing a bond with the State is of little importance from a practical point of view because the State law specifically provides that where a bond has been accepted under the Federal act it shall be accepted in lieu of the one required by the State law.

"*Provided, however*, That if a bond has been filed with and approved by the department of agriculture of the United States, as required by section 6 of the United States warehouse act, then such bond filed with and approved by the department of agriculture of the United States shall be considered as in lieu of the bond required by this section: *Provided*, That satisfactory proof of said filing and approval of such bond be filed with the director of agriculture."

Legally, however, for reasons hereinafter set forth the State law has no application to Federal licenses so that it is not necessary for a Federal licensee to make proof required by the State law.

Until March 2, 1931, the United States Warehouse Act specifically required, section 6, that each licensee give a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the State, district, or territory in which he is conducting such warehouse, as well as under the terms of this act and the rules and regulations prescribed hereunder * * *" and also directed. Section 29, "that nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers." But on March 2, 1931, the act was amended in several particulars, Public No. 772, Seventy-first Congress. As amended the requirement of the bond is that it merely shall "secure the faithful performance of his obligations as a warehouseman under the terms of this act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouses." Thus no reference is made to State laws.

The direction against interference with State law is omitted and in its stead is incorporated the provision that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." In view of the omission of the original provisions respecting State laws and the inclusion of the specific declaration that the power, jurisdiction, and authority of the Secretary of Agriculture shall be exclusive, it is obvious that it was the purpose of Congress to make the Federal law controlling and to relieve Federal licensees from the requirements of State law.

The language with reference to the exclusive jurisdiction of the Secretary of Agriculture is similar to paragraph 7 of section 20 (a) of the act to regulate commerce, as amended February 28, 1920, which was held by the Supreme Court of Illinois in *Chicago & Eastern Railway Co.* v. *Miller* (309 Ill. 257, 140 N. E. 823), to have the effect of making the provisions of the Federal act respecting the issuance of stocks and bonds by railroad companies exclusive of similar State legislation.

The Federal act is clearly within the power of Congress being based upon the commerce clause of the Constitution. It is therefore the controlling law as to warehousemen licensed under its provisions and relieves them from the necessity of complying with State laws respecting warehouses.

The presumption is in favor of the constitutionality of the Federal act. Its validity was assumed by the Federal district court in *Young* v. *Hiawatha Co.* (17 Fed. (2d) 183) and by the district and appellate courts in *Independent Co.* v *Dunwoody* (30 Fed. (2d) 306 and 40 Fed. (2d) 1). The statute is permissive and not obligatory. This is recognized by the State attorney general in his opinion but he is under a misapprehension in assuming this Department will undertake to require all warehousemen in the State to operate under its provisions. It has not been the policy of the Department to insist upon licensees under the act doing this and legally no such requirement could be made. The courts indulge the presumption that public officials will confine their activities within the limits of their authority (*United States* v. *Chemical Foundation*, 272 U. S. 1).

In view of the recent decisions of the Federal and State courts recognizing the general interstate movement of cattle, grain, and other commodities from States in which they are produced in abundance there would seem to be very little difficulty in establishing the eligibility of most warehouses in such States for licensing under the Federal act. *Stafford* v. *Wallace* (258 U. S. 495); *Lamke* v. *Farmers Grain Co.* (258 U. S. 50); *Shafer* v. *Farmers Grain Co.* (268 U. S. 189); *People* v. *Perry* (291 Pac. 233); *Young* v. *Hiawatha Co.* (17 Fed. (2d) 193); *State* v. *Cecil* (216 Ala. 391, 113 So. 254). In *Young* v. *Hiawatha Co.*, supra, the court speaking of a cotton warehouse licensed under the Federal act said "the warehouse is an instrument of interstate commerce."

In view of the foregoing the questions presented by you are answered in the negative.

Your copy of the State law and copy of the opinion of the Attorney General together with all other correspondence accompanying your memorandum are herewith returned.

Very truly yours,

ELTON I. MARSHALL, *Solicitor*.

Mr. GOLDSMITH. I should like to call on Mr. G. C. Johnstone, president of the Illinois Grain Corporation, who will discuss briefly the effect on Illinois farmers of the refusal of the Chicago Board of Trade to make the Farmers National accounts regular.

STATEMENT OF G. C. JOHNSTONE, BLOOMINGTON, ILL.

Mr. JOHNSTONE. Mr. Chairman and gentlemen, my name is G. C. Johnstone, Bloomington, Ill. I am a farmer and live upon and operate my own farm and have been a stockholder and director of local farmers' elevator for years. I appear here as a director of Farmers' National Grain Corporation and as president of Illinois Grain Corporation, Chicago.

Illinois Grain Corporation is a cooperative marketing organization owned by 200 local cooperative elevator associations in Illinois and a regional stockholder in Farmers' National Grain Corporation.

I am also a member of Illinois Agricultural Association, which is the Illinois Farm Bureau—an organization with 63,000 paid-up farmer members.

At the annual meeting of the Illinois Agricultural Association in Decatur, Ill., in January this year, a strong resolution in support of the commodity exchange bill as passed by the House of Representatives June 3, 1935, was adopted, and the board of directors and the officers of the association were urged to exert every possible effort to secure its passage. At the annual meeting of the Illinois Grain Corporation, in Peoria, Ill., February 12, this year, at which three-fourths of the members were present, a similar resolution was endorsed unanimously.

Members of Illinois Grain Corporation cannot agree with the amendment proposed by the Secretary of Agriculture. I feel and they feel that if savings can be made out of payments from the national to the regional, for services rendered, that such savings can properly be paid as dividends on stock or as patronage dividends. We insist such a practice does not constitute rebating. However, in the hope of getting legislation at this session of Congress we will, of necessity, and without criticism of the Secretary, forego for the time being what to us was and is a vital provision of the bill.

Farmers of few other States in the Union have had such a battle as the farmers of Illinois for adequate regulation of the exchanges from the farmers' viewpoint. As a director at that time I recall distinctly the fight which the Illinois Agricultural Association waged in the Illinois Legislature during 1920 and 1921 to obtain passage of a State law that would admit farmer cooperatives to membership on the Chicago Board of Trade. The board of trade, in opposing the bill at Springfield, urged farmers to "wait for Congress. This is

a matter for national legislation", it advised. When the Capper-Tincher Act of 1922 became a law, despite the opposition of grain exchanges, Joseph P. Griffin, president of the Chicago Board of Trade, at that time, announced that the board of trade would close its doors rather than conform to the provisions of the Capper-Tincher Act. But they did not close.

While farmers in general do not understand the technical provisions of this bill, they have very definite ideas regarding the marketing of their grain and are forcefully reminded of the disastrous crash in the Chicago market in July 1933, which closed the board of trade. They remember distinctly the amazing story that came out in Federal court relative to the failure of the Rosenbaum Grain Corporation in Chicago, just a year ago this month. Farmers are insisting, therefore, on adequate supervision of the grain exchanges which will not permit recurrence of the above-mentioned incidents. The two examples I have just mentioned have convinced grain growers of Illinois that the exchanges cannot regulate themselves and need a referee.

Reporting requirements on special accounts were lifted in October 1932 by the Secretary of Agriculture, and it was then no longer necessary for speculative traders to report to the Grain Futures Administration their position in the market.

The argument of the exchanges at the time was that the reporting provision was operating to keep buyers out of the market, and the exchanges gave assurance at the time that they themselves would set up the necessary machinery to safeguard the market against over-speculation. The fallacy of this contention was self-evident by the complete break-down of the board of trade machinery in July 1933.

Testimony in Federal court following the failure of Rosenbaum Grain Corporation, and this failure was within the past 2 years, during which the Chicago Board of Trade would tell you it has done so well in policing its own members, brought out the fact that members of the firm had been speculating with margin money deposited by customers.

The *Ettinger & Brand case* of Cleveland, 2 years before, brought out the same fact, namely, that members of the firm were playing the market with the money of their customers. The farm cooperatives everywhere are unanimous in their opposition to that practice, and they stand together in demanding that margin funds of customers be kept separate in some way from the capital account of commission houses. I shall not go into the technical or legal detail which will be handled by our counsel, Mr. Goldsmith.

There is another matter that farmers of Illinois would like to see corrected. Those familiar with the Chicago market know the need for a greater volume of bonded terminal storage space, whose receipts are deliverable in the fulfillment of futures contracts.

If there is to be any degree of balance between cash receipts and the great volume of futures traded in at Chicago, then a greater volume of space recognized as "regular" by the Chicago Board of Trade is imperative, if "squeezes" are not to occur frequently.

On June 30, 1931, Howell and the Howell group had contracts in July corn of 8,435,000 bushels. In the Chicago district there was then in store in public elevators recognized by the board of trade only 1,480,189 bushels of corn of deliverable grade. (Please note the

disparity in volume in Chicago between supplies of actual corn and "futures.") The price of corn shot upward 14 cents a bushel, but the increase lasted only 3 days and farmers received no benefit from the increased price. A 10-day delivery privilege would have benefited the farmer, as he could have moved corn to market during that period.

The way matters stand now, only receipts from terminals licensed under State law are deliverable in the fulfillment of futures contracts on the Chicago market. Our own Rock Island terminal in Chicago is licensed Federally, but its receipts are not "regular"; that is, they are not deliverable on futures contracts. Obviously, if grain cannot be delivered from our elevator it can only be delivered against hedging contracts by loading in cars, which increases the expense to our farmer members.

I am not acquainted with the legal problem involved, which will be discussed by Mr. Goldsmith, but as a farmer, and as a practical matter, it seems to me that the grain handler should be allowed to make a choice in the matter and, if he decided to license his house Federally, he and his customers should not be at a disadvantage because his receipts are not regular. How can a train handler serve his customers adequately unless Federal receipts, which are universally recognized as being good by bankers, are recognized by the Chicago Board of Trade as regular?

The Secretary of Agriculture, in his annual report for 1935, on page 117, summed up what seems to be the collective opinion of grain farmers generally. I quote:

> Continued opposition by the exchanges to more appropriate and more adequate control measures must lead ultimately * * * to the adoption of other methods of insuring against market risks. Unless the system can be conducted on the high plane of responsibility required of other institutions that similarly affect the public interest, the Government will be called upon to supply some form of price insurance that will merit public respect and public confidence.

Refusal on "funny" legal grounds to have Federal receipts deliverable on contracts, indicates a lack of responsibility which makes regulation imperative.

Senator POPE. Thank you, Mr. Goldsmith.

Mr. GOLDSMITH. I would like to call as our next witness Mr. C. C. Talbott, president of the North Dakota Farmers' Union.

STATEMENT OF C. C. TALBOTT, JAMESTOWN, N. DAK., PRESIDENT OF THE FARMERS' UNION OF NORTH DAKOTA

Mr. TALBOTT. Mr. Chairman and gentlemen, my name is C. C. Talbott. My residence is Jamestown, N. Dak. I am president of the Farmers' Union of North Dakota and vice president of the Farmers' Union Terminal Association, a farmer by practice and profession all my life.

Mr. Chairman and gentlemen of the Committee, I have been amazed at the assurance and effrontery of some of the witnesses opposing this bill in stating that they adequately represent the producers of grain. Looking back over my experience for more than a quarter of a century in the spring-wheat area, and thinking of some such conditions as we found in 1916, when these self-same and self-constituted arbiters of our destiny in the marketing of our

commodities rigged the market and destroyed more than a dollar bushel of actual price for our entire crop in 1916, in the face of a calamity known as a rust condition—I say that advisedly because an unfortunate happening in my family kept me from marketing my grain at the time my neighbors all over the State were being paid 60 to 65 cents a bushel for that crop, because of its worthless quality. It didn't even stand up to grade. It was called "DP." It weighed 48 pounds to the bushel. I think Senator Frazier will remember some of the instances I am mentioning now. I kept my crop, which was small enough, until some time in February of the following year, and I was paid by the same market and the same people who said it was unfit for milling quality $1.75 a bushel for the crop that went to market in the fall at approximately 65 cents a bushel, and some of it less.

I notice that these people admit that there has been some irregularities in their purchases back over the years. I as a farmer very well remember when we were not allowed even the privilege of an elevator site when we wanted to get together and correct some of the local practices that were used against us in the handling of our grain at the local markets. The railroads were against us. They were in collusion with the grain trade. There isn't any argument or question about that.

The time came finally when this same self-satisfied bunch of people decided that we were going to rebel and were not going to stand for it any longer, and so they came out and very magnanimously offered to help us organize local cooperative farmers' elevators, and even agreed to finance them, and did 100 percent in lots of instances. Why did they do that? Because they didn't want us to force our way into the central markets. They wanted us to assemble the grain and ship it to them for handling and processing at the central terminal markets, and we, of course, were glad to avail ourselves of even the little privileges that we got under this kind of a process. But forward-thinking farmers continued the battle, insisting that we ought to have our rights as producers of these commodities that feed the Nation in the market places.

The Equity Cooperative Exchange was organized. Seats were refused them on the boards of trade and exchanges. They were ridiculed by the press and the grain journals. They were finally forced into friendly receivership. We in the Northwest organized the Farmers' Union Terminal Association out of the wreck of the old Equity Cooperative Exchange. I had a very large part in the reorganization.

Senator FRAZIER. Right there, you remember the Equity Cooperative Exchange investigation was made by the Federal Trade Commission?

Mr. TALBOTT. Yes, sir. I am trying to conserve time, Senator. I could use up an hour very easily, but I don't want to do that. Ten minutes is all I want to consume, if I can possibly go over the high spots.

The thing I want to get before you, gentlemen of the committee, is my experience as a farmer. We made application for a seat on the Duluth Board of Trade, and we did have some friends that operated on that board of trade, but not enough friends to give us a seat there. We finally came to Washington, D. C., and interceded

with the Secretary of Agriculture, Mr. William Jardine, to see what he could do about getting us an opportunity to trade on the Duluth Board of Trade, and through his good offices, and maybe persuasion, we were allowed a seat on the Duluth Board of Trade. We never were able to get a seat on the Minneapolis Chamber of Commerce. They had the colossal gall and audacity to ask us to submit to them the names of every one of our shippers before they would grant us a seat.

I think you gentlemen can see that a farmer who has been through these experiences cannot sit tamely by and listen to the testimony of the opponents of this bill, when all we are asking for in this legislation is an impartial tribunal that will protect our right and our interests in the market places, and give us a chance to market our own grain.

We did not stop there. After the Farmers' National Grain Corporation was organized, the Farmers' Union Terminal Association became one of its principal stockholders. We were denied privileges in the Chicago Clearing House. We were compelled during the 2 years of litigation that has been described here to pay brokerage commissions which cost a quarter of a million dollars, paid by the farmers who organized that institution.

I cannot testify without some feeling when this situation has been delayed and procrastinated so long. It seems to me that this Congress owes a duty to the basic industry of this country that is prostrated today in the face of the fact that the people who are objecting to this legislation have made colossal fortunes while we have been going bankrupt steadily, and it seems to me that this Congress should not hesitate another minute in the passage of legislation that gives us an impartial tribunal to take our grievances to.

I am concerned with the fact that these people over the years have been concerned solely—let me say, for instance, the preamble of the Minneapolis Chamber of Commerce in setting up that institution a few years ago. I am not going to quote it all; I am going to quote this sentence—"This exchange is organized for the benefit of Minneapolis and the members of this exchange." A concession that they were not concerned in the prosperity or welfare of us people whose commodities they were trading in. They were concerned with and were organizing an exchange that would benefit the people that organized it, and all us farmers are asking for is the opportunity to trade in our own commodities. We lack, because of our financial condition, in most cases sufficient capital to operate as we would like to operate. We have to operate on borrowings at high rates of interest. These people with their large volume of capital have always had preferred rates at the banks over the small borrower. They come in after all these years and after all the exposures and after all the legislation that has been forced upon them to give up some rights and say, "Let us alone. Don't pass any legislation. We admit we have been bad in some instances, but we have got good now. We are going to behave ourselves from now on. If you will just let us alone and let us continue to run this show we promise that we are going to be good."

In the light of our experiences we are just a little doubtful about their religion at this time. A quarter of a million dollars paid for brokerage while we wait is pretty expensive to us people, with 15,000 farmers in my State now that should be planting grain and that are

waiting for the administration to make up their minds whether they want them to plant grain or not; with imports coming into the country of spring wheat and have been flowing in here now for 2 years, out of which these same gentlemen will take their commissions and handling charges; 15,000 farmers in the State of South Dakota and 10,000 in my State will not be able to plant a crop even, and take advantage of what looks like might be a remunerative price at the present time, because of their bankrupt condition. If these people are so sure that they can remedy marketing conditions, we would like very much to see them think something about an ultimate price to the people that produce this commodity.

Now, gentlemen, I implore you as a farmer and a so-called leader of farmers—and I have for 9 years been consistently reelected at the head of my organization, and I believe that I have the confidence of a very large majority of them, believing that I do really serve them—I implore this committee to report this bill favorably without changes. I believe the administration has recommended a bill here that will at least correct some of the evils, and I hope that the Senate will not delay in passing this House bill. I think the delay has been entirely too long at the present time. I thank you, gentlemen.

Senator POPE. Thank you very much, Mr. Talbott. Call your next witness.

Mr. GOLDSMITH. I wish to call as our next witness Mr. D. L. O'Connor, president of the Farmers' Union Terminal Association, who may want to read part or all of his testimony into the record.

STATEMENT OF D. L. O'CONNOR, NEW ROCKFORD, N. DAK., PRESIDENT, FARMERS' UNION TERMINAL ASSOCIATION

Mr. O'CONNOR. Mr. Chairman, I think I could just say a few words and then file my statement.

Senator POPE. Go ahead, Mr. O'Connor, and handle it as you like.

Mr. O'CONNOR. Mr. Chairman and gentlemen, my name is D. L. O'Connor. I live at New Rockford, N. Dak. I am president of the Farmers' Union Terminal Association, with headquarters at St. Paul, Minn.

This association is composed of some 300 country elevators located in the States of Montana, North and South Dakota, and Minnesota. I am also a director of the Farmers' National Grain Corporation and was secretary-treasurer of Munster Equity Elevator Co., New Rockford, N. D., from the time of its organization to a year ago, at which time I resigned due to lack of time to properly look after the affairs of this corporation.

We are appearing here in support of this bill, H. R. 6772. The right of the farmer to market his product as he sees fit cannot be denied. The improvements brought about in the marketing of grain has been accomplished in spite of the opposition of the grain exchanges and not with their help. They have opposed the corrections they now boast about, and only accepted them when forced to do so.

The farmers first organized their marketing at local points; then organized these local points into terminal organizations, and terminal organizations into Farmers' National Grain Corporation.

Grain exchanges and their members have no interest in the price farmers receive excepting to the extent that it is adequate to pay

marketing costs. They deny the farmer the right to establish a charge for the services he renders to humanity in the production of his commodity, while claiming that right for themselves. They turn the farmers marketing over to the tender mercies of the gamblers and speculators, whom one of the witnesses here stated was the best friend the farmer ever had. Mr. Taber said yesterday "The farmer, too, has a right to make some mistakes, even in the choosing of his friends, and I, as a farmer, will make the mistake of not having these speculators on the Chicago Board of Trade, who testified for me against this bill, as my best friends."

The results of this unrestricted marketing system has bankrupt agriculture while handsomely compensating the handlers of his product.

In order to show how cooperatives are treated by exchanges and their members, I wish to point out one instance: The rules of the exchanges require Farmers' National Grain Corporation to file copies of their financial statement with them. Mr. Atwood, president of the Duluth Board of Trade, taking advantage of his position, had his auditor make a prejudiced analysis of this report and set it out to the Farmers' Elevator at Dore, N. Dak., in order to destroy their confidence in our institution. This has happened since 1932 and since the establishment of a business conduct committee.

Section 4 (a) of this bill, which provides for the protection of customers' margin money, is, in my estimation, very important. In the operation of my local elevator over the years, in order to protect the funds of this company and to prevent their use by the commission companies in the operation of their business, we purchased United States Government certificates of indebtedness and bonds. Commission companies should be compelled to place these funds in trust and not be allowed to jeopardize them in the operation of their business.

Before we can have a sound agriculture in this Nation, the gamblers must be eliminated and a marketing machine devised which will bring to the farmers their just share of the national income, but awaiting that day let us at least have the commodity exchange bill immediately to curb admitted fraud, deceit, and sharp practices.

Mr. Chairman and gentlemen, in closing I simply want to say that I implore you to pass this bill as quickly as possible.

Mr. GOLDSMITH. Our next witness is Mr. William C. Horn, secretary-treasurer of the Ohio Farmers Grain & Supply Association.

STATEMENT OF WILLIAM C. HORN, FOSTORIA, OHIO, SECRETARY-TREASURER, OHIO FARMERS GRAIN AND SUPPLY ASSOCIATION

Mr. HORN. Mr. Chairman and gentlemen of the committee, my name is William C. Horn and my home address is Fostoria, Ohio. I am secretary-treasurer and manager of the Ohio Farmers Grain & Supply Association and a director of Farmers National Grain Corporation.

The Ohio Farmers Grain & Supply Association has more than 100 farmer-elevator members, owned and controlled by 40,000 farmer-members. Our cooperative elevator association handled $30,000,000 worth of business the past calendar year. Proof of this volume of

business can be had from the extension service of Ohio State University.

At annual meetings of our stockholders the past 2 years, members have adopted resolutions unanimously urging the passage of the commodity exchange bill, H. R. 6772. They are anxious that the rights of cooperatives on contract markets be further safeguarded, and they are eager to have a curb put on speculative abuses that have characterized these markets periodically in the past.

They see the Federal Government striving to bring about equality between agricultural and industrial prices, on the one hand, and they see, on the other hand, uncontrolled speculation knocking 28 cents a bushel off the price of the farmers grain in 2 short days in July 1933. This doesn't appear logical to the farmers of my State, and they are insisting that uncontrolled speculation be curbed.

Picture the following: The President, the Congress, and an army of employees engaged in the program known as A. A. A. to carry relief to grain farmers and producers of other basic commodities. On July 9, 1933, the Secretary of Agriculture declared the imposition of a 30-cent per bushel processing tax on each bushel of wheat processed. This tax yielded to the farmer about 28 cents per bushel net on the wheat domestically consumed, which represented about 15 cents per bushel on the total historic production. On July 19 and 20, 1933, 10 days after the imposition of the processing tax, speculators in Chicago wheat futures broke the market 28 cents per bushel. Thus, in 2 days, uncontrolled speculation neutralized the effort of the President, the Congress, and the army of employees in the Triple-A program. My farmers have a good memory, and they continue to resent market practices that produce such results.

Contributing to that market disaster in 1933, which neutralized for the time being, at least, the benefit payments of Triple A, were two speculators from my home State—Adrian Ettinger and Ewing W. Brand, of Cleveland. These speculators were long around 20,000,000 bushels, which were insufficiently margined. Worse than that, however, was the fact that they were speculating with the margin money of customers—a practice which Ohio farmers are bitterly opposed to. They are insisting, along with farmers in other grain States, that the margin money of customers be kept separate from the capital account of the firm doing the trading.

About the time the commodity exchange bill was up for hearings before the House Committee on Agriculture 2 years ago, charges were preferred by the Grain Futures Administration against Arthur W. Cutten, a member of the Chicago Board of Trade. He was accused of violating the rules and regulations promulgated under the Grain Futures Act.

The grain trade at that time howled to high heaven that the charges were timed by the Grain Futures Administration to further the commodity exchange legislation then pending. This was disproved effectively in the testimony given before the House committee by Dr. Duvel, of the Grain Futures Administration, in April 1934. In the meantime, the Seventh Circuit Court of Appeals, on November 25, 1935, found Cutten guilty, as charged by the Grain Futures Commission, but the court found itself unable to punish him, due to loose wording of the present Grain Futures Act. That

decision is brief but eloquent and points out forcefully one of the weaknesses of the present Grain Futures Act. I would like to see this decision go into the record as conclusive proof that a large-scale speculator can rig and raid the market without penalty unless he is caught in the act.

The Chicago Board of Trade, which claims it is able to regulate the conduct of members through its business-conduct committee, has not taken steps to discipline Cutten, even though he was found guilty by the Seventh Circuit Court of Appeals. To this good day he is a member in good standing, so far as the Chicago Board of Trade is concerned.

One of the witnesses of the Chicago Board of Trade opposing the bill said that the speculator was the farmer's best friend. Perhaps Cutten is choice among the speculators as being the best friend the farmer ever had.

There was put into the record yesterday by the opponents of this bill a telegram from a so-called cooperative elevator group at Pollock, S. Dak., protesting passage of commodity exchange legislation. Some 20 or 30 letters and telegrams of protest from other groups claiming to be cooperatives were added to the record also. I am familiar with that general type of cooperative, which is found in several grain States.

Two years ago, when hearings on grain-exchange legislation were being conducted before the House Committee on Agriculture, Lawrence Farlow, Bloomington, Ill., Secretary of the Farmers Grain Dealers Association of that State, appeared to testify against the bill. With him came Homer B. Grommon, Plainfield, Ill., president of the organization, who also testified against the bill.

There is much in common, I am sure, between the so-called cooperative at Pollock, S. Dak., and the so-called cooperative represented by Mr. Farlow and Mr. Grommon. When these two gentlemen from Illinois returned home—and I want the Chicago Board of Trade to correct me if I am wrong—they submitted their expense accounts to the Chicago Board of Trade, and the board of trade paid the bill.

In December 1933, at the annual meeting of the Farmers National Grain Dealers Association, a resolution was adopted providing for a commission to inquire into agencies, laws, and regulations affecting grain prices. This national group is the service organization for State groups like the one headed by Mr. Grommon, but as a national it does not engage in grain marketing. Homer B. Grommon was named chairman of the commission.

The commission declared itself to be an unbiased fact-finding agency, interested in pure research—the first farmer commission ever to inquire into marketing operations of the grain exchanges.

After extensive hearings in leading terminal markets in this country and Canada, a volume of hearings and a volume of findings were printed and distributed. The preponderance of testimony came from dealers and processors. The two volumes, issued in the summer of 1935, gave a clean bill of health to the grain exchanges. It was just the report needed by grain exchanges as a club to delay or stave off the commodity exchange bill, then as now before the Congress.

At its annual meeting in Chicago in December 1935, the association which fathered the two-volume report started a controversy with Farmers National Grain Corporation. The Chicago Board of Trade was drawn into the dispute. As a result of that controversy there appeared in the Chicago Tribune of December 7, 1935, a story quoting Robert P. Boylan, president of the Chicago Board of Trade, to the effect that the board of trade had paid $8,700 toward the expense of the two-volume report.

I have these two-volume reports there and the paper quoting the statement. Here was proof again that the Chicago Board of Trade was living up to its traditional attitude toward organized marketing by farmers themselves.

Farmers have no faith in the promises of the grain exchanges to clean house. They do not believe that boards of trade can regulate themselves. Farmers prefer to put their trust in an impartial Federal tribunal whose duty it is to supervise the exchanges. They want the bill now before you passed, at this session.

Senator POPE. Thank you very much, Mr. Horn. You say you would like to have this opinion put into the record—the opinion that you refer to?

Mr. HORN. Yes.

Senator POPE. It is brief, and it may go into the record.

(The report referred to follows:)

In the United States Circuit Court of Appeals for the Seventh Circuit. No. 5467. October Term, 1935, October Session, 1935. *Arthur W. Cutten, petitioner*, v. *Henry A. Wallace, Secretary of Agriculture, and Henry A. Wallace, Secretary of Agriculture, Homer Cummings, Attorney General, and Daniel C. Roper, Secretary of Commerce, Sitting as a Commission Under The Grain Futures Act, respondents.* Petition for review of order of commission under the Grain Futures Act. November 25, 1935.

Before EVANS and SPARKS, *Circuit Judges*, and BALTZELL, *District Judge*.

EVANS, *Circuit Judge*. This is a petition for review of the order of the commission (created under the Grain Futures Act) which directed that all contract markets refuse all trading privileges thereon to Arthur W. Cutten, of Chicago, for a period of two years from March 1, 1935.

Formal complaint against Cutten had been made April 9, 1934, wherein he was charged with various violations of the Act enacted September 21, 1922, commonly known as the Grain Futures Act. A hearing was had before a commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General. Upon the testimony taken, the commission made findings of fact from which we quote the following:

"1. The Chicago Board of Trade was duly designated as a contract market under the Grain Futures Act on May 3, 1923, and it has been a contract market continuously since that date.

"2. During the years 1930 and 1931 respondent was, and now is, a member of the Chicago Board of Trade.

"3. From and after October 31, 1927, through and including the year 1931, members of contract markets were required by regulations made pursuant to the Grain Futures Act to report to the Grain Futures Administration their net position in futures owned or controlled by them, long or short, by grain and by future, when they had net open commitments in any one future equal to or in excess of 500,000 bushels of wheat, corn, or oats, and 200,000 bushels of rye or barley.

"4. Respondent in 1930 and 1931 had knowledge of the reporting requirements.

"5. Respondent, in 1930 and 1931, transacted his business through eight commission firms. He split his trade into 35 accounts. He carried some of his accounts in the names of relatives and associates. Respondent owned or controlled each of the 35 accounts.

"6. During the year 1930 respondent did not make any reports to the Grain Futures Administration.

"7. On approximately 130 days during 1930 respondent had open commitments in a single wheat future in accounts owned and controlled by him equal to or in excess of 500,000 bushels.

"8. On approximately 119 days during 1930 respondent had trades in a single wheat future in accounts owned and controlled by him in which he had open commitments equal to or in excess of 500,000 bushels.

"9. During the year 1931 respondent made reports irregularly to the Grain Futures Administration, none of which was true or correct as a statement of his net position on the market on the day covered by such report.

"10. During the year 1931 there were a great many days on which respondent made no reports at all, although having on such days open commitments in a single wheat future, in accounts owned and controlled by him, equal to or in excess of 500,000 bushels.

"11. On approximately 110 days during 1931 respondent had trades in a single wheat future in accounts owned and controlled by him, in which he had open commitments equal to or in excess of 500,000 bushels.

"12. On many days during the years 1930 and 1931 the respondent, in accounts definitely identified as belonging to him, had open commitments and trades which he failed to report as required by the Act and regulations made pursuant thereto.

"13. During the year 1931, the respondent made false reports of his open commitments and transactions in accounts definitely identified as his and indisputably belonging to him contrary to the Act and regulations made pursuant thereto.

"14. Respondent's purpose in concealing his position in the market was to manipulate the price of grain and thereby to make large profits. He systematically allocated purchases and sales of wheat futures to the various accounts in order to keep them under 500,000 bushels, and thus to avoid detection. He attempted to manipulate the price of grain."

The commission also made conclusions wherein it found that Cutten's conduct constituted a violation of the Grain Futures Act and the rules and regulations made pursuant thereto, and that an order should be entered that all contract markets refuse all trading privileges to him for a period of two years. The order, which is here assailed, was thereupon entered.

The Grain Futures Act has been upheld and construed in the following decisions: *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Board of Trade of Chicago* v. *Wallace*, 67 F. (2d) 402; and *Farmers' Livestock Commission Co.* v. *U. S.*, 54 F. (2d) 375.

The commission filed an opinion which dealt at length with the various questions raised by petitioner, which we will consider under two headings: (a) The sufficiency of the evidence to support the findings. (b) The sufficiency of the findings to support the order.

(a) Petitioner asserts that the evidence does not support the findings of the commissioners. With this contention we cannot agree. It would serve no useful purpose to set forth the testimony upon which this conclusion is predicated. It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

(b) Whether the findings support the order depends upon the construction which we are required to give to section 6 (b) of the Act. The pertinent statutes read as follows:

"SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a 'contract market' when, and only when, such board of trade complies with and carries out the following conditions and requirements: * * *.

"SEC. 6. Any board of trade desiring to be designated a 'contract market' shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

"(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade *has failed or is failing* to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. * * *

"(b) If the Secretary of Agriculture has reason to believe that any person *is violating* any of the provisions of this Act, or *is attempting to manipulate* the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect * * *. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. * * *."

Petitioner argues that the power to suspend a trader must be found in section 6 (b), and an examination of said section makes it imperative that the trader accused of the wrongdoing condemned by the Act be one who "*is* violating any of the provisions of this Act, or *is attempting to manipulate* the market price of any grain." In other words, petitioner contends that any violation of the Grain Futures Act of which he *was* shown to have been guilty *was committed* some two years *prior* to the institution of these proceedings, and consequently he is not within the purview of said section 6.

The determination of the appeal, therefore, turns upon the use of the words "is violating" and "is attempting to manipulate" in said section.

Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction without which the power to deal with an offender is almost nil. We are, however, required to construe the statute—not to pass upon its purposes, but upon its wording.

Support for limiting the construction of the words so as to exclude instances where the violation has occurred may be found in section 6 (a). There, referring to the failure of the board of trade to comply with the requirements of the Act, we find the words "has failed or is failing" to comply with "any of the above requirements." What effect then must we give to the language of 6 (b) where the words "has failed" are omitted?

It is admittedly rather difficult to understand why Congress would, when dealing with the punishment of a Board, include past as well as present violations, whereas in section 6 (b) when dealing with the punishment of the individual trader, it provides for punishment only when such person "is violating" or "is attempting to manipulate the market."

Respondents' counsel, in addition to supporting their argument that the Act, to effectually accomplish its purpose, should be made to cover past offenses as well as existing violations of the Act, call our attention to the following decisions: *Church af the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *Lacher*, 134 U. S. 624; *The Sterling*, 65 F. (2d) 439; *Silver* v. *Ladd*, 7 Wall. 219; *United States* v. *Kirby*, 7 Wall. 482; *Reiche* v. *Smythe*, 13 Wall. 162; *United States* v. *Katz*, 271 U. S. 354; *Sorrells* v. *United States*, 287 U. S. 435; *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84; *Huidekoper's Lessee* v. *Douglass*, 3 Cranch 1; *Hayden* v. *Ortkeiss*, 83 Ky. 396; *Louisville Southern Railroad Company's Receivers* v. *Lewis*, 101 Ky. 296; *Malloy* v. *Chicago & N. W. Ry.*, 109 Wis. 29; *Rutherford* v. *Greene's Heirs*, 2 Wheat. 196; *Maysville & Lexington R. R. Co.* v. *Herrick*, 76 Ky. 122. These decisions are to the effect that a court is justified in departing from the plain language of the statute in order to give it a fair and practical meaning. Among the cases cited are some where the tense of the verb used in the statute is changed.

We are not, however, persuaded that the words of the statute here used can or should be so stretched as to include past violations which were committed and completed two years before the complaint was filed.[1]

We can not ignore the fact that Congress in dealing with contract markets provided for cancellation of rights if violations of regulations *had* occurred whereas in the next section the right to cancel a member's privilege on a contract market was limited to instances where the member *is* violating a regulation. While respondents' counsel has ably argued that the commission should have the power to suspend for past transgressions and without such authority the section is sterile—yet he has not met the stubborn and inescapable fact that Congress has spoken in two successive sections. In one it expressly included past as well as present violations and in the next section specified only existing violations as ground of suspension. To extend the latter section to the breadth of the former would be usurping the function of Congress.

Under such conditions it is for Congress to amend its legislation, if it deems it wise and desirable so to do, not for courts to do so by judicial construction.

The order is reversed.

Mr. GOLDSMITH. Mr. Chairman, you heard the leaders of the guild of organized agriculture on this bill yesterday. I think it is fitting that at this time we hear some of the views of the agricultural craft. It gives me great pleasure, therefore, to call as our next witness, Mr. Clifford V. Gregory, editor of the Prairie Farmer.

STATEMENT OF CLIFFORD V. GREGORY, CHICAGO, ILL., EDITOR OF THE PRAIRIE FARMER

Mr. GREGORY. Mr. Chairman and gentlemen, my name is Clifford V. Gregory, Chicago, Ill. I am editor of the Prairie Farmer. For the past year I have been chairman of the National Farm Conference, which is the correlation group of all the leading farm organizations and cooperatives in the country.

I think it would be unfair for me to take the time of the committee, and that I could add nothing by discussing the technical phases of this bill, but perhaps I can in a very few moments endorse some of the things that have been said regarding the attitude of farmers themselves toward this question. I keep in pretty close touch with the farmers in the territory in which our paper circulates, principally Illinois and Indiana, and I think I can state with a good deal of accuracy that the views which have been expressed here by the representatives of various farm organizations do quite accurately reflect the views of the rank and file of farmers in those two States on this question.

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[1] Where there is no ambiguity in words of statute there is no room for statutory construction. *U. S.* v. *Mo. Pac. Ry. Co.*, 278 U. S. 269; *Helvering* v. *N. Y. Trust Co.*, 292 U. S. 455; *Mich.* v. *Mich. Trust Co.*, 286 U. S. 334; *Yerke* v. *U. S.*, 173 U. S. 439; *Texas* v. *Chiles*, 21 Wall. 488; *U. S.* v. *Wiltberger*, 5 Wheat. 76; *Boudinot* v. *U. S.*, 11 Wall. 616; *U. S.* v. *Union Pac. R. Co.*, 91 U. S. 72; *Lewis* v. *U. S.*, 92 U. S. 618; *Doe* v. *Considine* 6 Wall. 458; *U. S.* v. *Ewing*, 184 U. S. 140; *Amer Exp. Co.* v. *U. S.*, 212 U. S. 522; *Caminetti* v. *U. S.*, 242 U. S. 470; *U. S.* v. *Hill*, 248 U. S. 420; *U. S.* v. *Standard Brewery Co.*, 251 U. S. 210; *Commissioner* v. *Gottlieb*, 265 U. S. 310; *St. Paul M. & M. R. Co.* v. *Phelps*, 137 U. S. 528; *Cox* v. *Lott*, 12 Wall. 204; *Russell Motor Co.* v. *U. S.*, 261 U. S. 514; *Duke Power Co.* v. *Commissioner*, 44 F. (2d) 543; *Braffith* v. *People*, 26 F. (2d) 646; *Riverdale Co-op. Assn.* v. *Commissioner*, 48 F. (2d) 711; *So. Carolina Produce Assn.* v. *Commissioner*, 50 F. (2d) 742; *Town of Clayton* v. *Col. & So. Ry. Co.*, 51 F. (2d) 977 *Darby-Lynde Co.* v. *Alexander*, 51 F. (2d) 56; *In re Boggs-Rice Co.*, 66 F. (2d) 855; *McCaughn* v. *Amer. Meter Co.*, 67 F. (2d) 148; *United Electric Coal Co.* v. *Rice, et al.*, decided by this court October 26, 1935.

I might say, incidentally, endorsing what Mr. Talbott said about the difficulties in the old days on the part of farmers' elevators in getting railroad sites and finding markets, that about 30 years ago I was vice president of the Farmers Elevator Co. in nothern Iowa, went through a good deal of that same experience that Mr. Talbott went through and can endorse what he has said regarding that.

There has been an attitude all down through these years on the part of the traders and speculators in grain who have set up the central markets, and particularly the great speculative markets, to regard that as their own private business. That is an attitude which farmers resent very deeply. They feel, and I believe that they feel rightly, that the operation of these great grain exchanges, particularly the tremendous speculative purchases and sales on those exchanges, cannot help but have a very considerable effect on the price of grain, and particularly on fluctuations in that price.

The farmer is concerned not with average price but with the price when he sells his grain. A market that fluctuates severely from day to day and week to week is to the farmers disadvantage, and he feels very deeply that a lot of that fluctuation is unnecessary, that it is the result of the opportunity which this future-trading system that has grown up in private hands provides for people now and then to manipulate markets, to use that machinery for their own profit; and it is a temptation that very frequently some of the speculators are not able to resist. Some of the specific items of recent history that have been given by some of the witnesses, I think, demonstrates the truth of that statement.

So the feeling of the farmers in my country is that these institutions cannot properly be regarded as private institutions to the extent that it is the business of no one outside the members what is done on them. They affect the great rank and file of farmers, their prosperity, their prices, too greatly. I may say in that connection that there is very grave doubt in the minds of a great majority of farmers as to the virtues of the speculative system of determining market prices. If it were put to a vote among them I think that even without waiting for a substitute system to be developed, the majority would vote against that sort of a system. But it does exist. It is not likely to be replaced immediately, or probably very soon, by some other sort of a system; therefore they feel that the public interest, and particularly the interest of the producer of these farm commodities, in the conduct of these exchanges is so deep that they are asking only what they should have asked for and received years ago when they asked for adequate public regulation of the operations of these great markets. The farmers have been asking for that for a number of years. I remember back shortly after the close of the war a very definite attempt was made on the part of Illinois farmers to secure State legislation in that State regulating the Chicago Board of Trade. At that time one argument that defeated those measures was presented by the grain exchange to the effect that the proper place for regulation was in Congress and not in the State legislature, because the operations of exchanges were extended so far across State lines. The farmers accepted that and came down to Congress. The Capper-Tincher Act was passed. That has proven to be not entirely adequate to do the job, so the farmers, as represented by their organizations, are asking now for this additional

legislation, and they are very hopeful that it will receive the favorable consideration of the Senate, as it has already done by the House.

I thank you, gentlemen.

Senator POPE. Thank you, Mr. Gregory.

Mr. GOLDSMITH. Just two final observations in closing: First, we deeply appreciate the consideration which this committee has given us in hearing the proponents of the bill; and secondly, I think that we end where we began, with the Jones bill as reported favorably by Chairman Marvin Jones, H. R. 6772. We have discussed the various proposed amendments and we feel that the bill should be passed as enacted by the House, plus the amendments recommended by the Secretary of Agriculture, ending with the same story.

I am going to leave with the chairman of the committee sufficient copies of the Jones report, which discusses the bill in detail, for the use of any committee members who may want to avail themselves of that report. Again we thank the committee.

Senator MURPHY (presiding). The chair would like to request that you submit a copy of the House bill, together with the amendments as recommended by the Agricultural department.

Mr. GOLDSMITH. We will be very glad to do that, Mr. Chairman.

Senator MURPHY. And if there are any amendments offered by you independent of them we would like to have them also.

Mr. GOLDSMITH. There were none.

Senator MURPHY. I do not recall specifically.

Mr. GOLDSMITH. No amendments were offered by us.

Senator MURPHY. I will not ask you then to submit a copy of them; I will ask you to submit just a copy of the Agricultural Department's amendments.

Mr. GOLDSMITH. Along that line I direct your attention to the fact that we have accepted section 652 as recommended by the Secretary of Agriculture, with the addition of the word "federated." That was the only change.

Senator MURPHY. Now, I submit for the record an amendment proposed by—submitted to me as chairman by the representatives here of the butter-and-egg industry, effecting merely to strike out the words "butter and eggs" on page 2, lines 10 and 11.

(The amendment is as follows:)

In behalf of the witnesses that have appeared in behalf of the butter-and-egg industry, I desire to submit for the record the amendment that has been proposed by our people.

That H. R. 6772 be amended on page 2, lines 10 and 11, by deleting the words, "butter and eggs."

LLOYD S. TENNY.

I also present for the record a letter addressed to Senator Smith by H. B. Grommon, president of the Farmers National Grain Dealers Association, bearing on the bill.

(The letter referred to follows:)

THE FARMERS NATIONAL GRAIN DEALERS ASSOCIATION COMMISSION,
Chicago, Ill., April 15, 1936.

Senator ELLISON D. SMITH,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: As President of the Farmers National Grain Dealers Association and finding it impossible to represent my association at the public hearing, I respectfully request that this letter be read to the agricultural committee of the Senate, and approval of said Senate committee, and request that

their recommendation to the Senate of the United States be that the bill, known as H. R. 6772, report no. 1431, do not pass. Briefly, for the reason that the provisions of the bill are not necessary and are neither in the interest of the producer nor the consumer of agricultural commodities. First, a bill in allowing rebates to one particular class, is, in my opinion, not only a violation of law, but will have a tendency to destroy legitimate and wholesome competition in agricultural commodities to the detriment of all classes of our citizens. There is ample proof that the backers of this bill have in mind a monopoly in the distribution of farm products.

Our second objection, and perhaps the most vital and far-reaching in its effect, is the delegating of power to political appointees to formulate regulations and rules for the conduct of legitimate business whenever impulse or inspiration appears to them necessary or advisable. The substitution of such individual power in place of well-defined laws will have the inevitable result of driving would-be purchasers of agricultural products from the market, thereby tending to restrict, hamper, and probably ruin a free, open, and competitive market. Agriculture needs more, and not fewer buyers for its products.

I wish you might call the attention of the committee to the two types of farm organizations engaged in the marketing and handling of farm products, one supporting the passage of the bill under consideration, and the other opposing its passage. The one favoring its passage is fairly well described in report no. 42 of this same Senate committee. It is illuminating to see by this report how many of the units comprising the Farmers' National Grain Corporation were apparent failures and without Government aid would have been unable to exist in legitimate business competition.

In opposition to the passage of the bill is an organization that has functioned successfully over a period of many years, having invested sums approaching $100,000,000 and having farmer stockholders numbered by the thousands. Our cooperative farmers' elevators came into existence some 30 years ago because of a monopoly of the country grain business by large ruthless corporations. We did not aim to enter the field and establish another monopoly but only desired to bring back a free competitive market in the country. This we did and now we find a so-called cooperative sponsoring a bill that would return the country handling of grain to a monopoly worse than that which prevailed when our cooperative movement entered and corrected this condition.

I assume, gentlemen, that any monopoly is viscious, wrong, and un-American, whether it be a monopoly by big business or farmers. To further strengthen such a cooperative the privilege of breaking the laws of the United States as made by Congress and permitting rebating by them as a powerful lever to bring about a complete monopoly of the country business, such a thing must not be in a republic.

It is my hope that your committee will be convinced of the unfairness contained in the provisions of this bill and also of its probably disastrous effect not only to agriculture but tothe Nation as a whole.

Thanking you for the privilege of presenting this statement and for any assistance you can render the farmers of this country in presenting this brief statement and voicing our vigorous protest against a favorable report on this bill and against its passage by the Senate of the United States, I am

Yours very truly,

H. B. GROMMON,
President, Farmers' National Grain Dealers Association.

Mr. STURTEVANT. Mr. Chairman, might I have the privilege of making a short statement—5 minutes?

Senator MURPHY. All right; go ahead for 5 minutes.

Mr. STURTEVANT. I want to express our appreciation for the granting of these hearings, and particularly for the interest you have shown in our troubles and the courtesies extended to us during these hearings. It is our understanding that they were granted for the specific purpose of allowing us to show to you certain mechanical defects in the bill, and we confined our evidence to those points; and I would like to emphasize the fact that we introduced no word of evidence in opposition to the bill as a whole. We introduced for

your consideration 12 amendments. On eight of these there has been evidence in opposition, and I make no comment on that, as the questions are before you; but on four of them there has been no evidence in opposition, and I would like to respectfully urge that these four mechanical amendments which we presented be incorporated in the bill. The first one is on page 8, introduced for the purpose of exempting unwitting violations of the law.

The second one is on page 12, the purpose of which is to provide a judicial stay during trial in case the bill authorizes registration or licensing, so that members of the trade under license may have the right to continue in business until after trial and conviction.

The third is a very important amendment which we introduced, which seeks to legalize our contracts in all jurisdictions.

The fourth is the amendment to that section of the bill which Mr. Thatcher very briefly introduced, relating to time of delivery and time of notice. We introduced amendments clarifying these provisions of the bill, and we urgently request that they be incorporated.

I would like in closing to again call the attention of the committee that while the Chicago Board of Trade has taken a leading part in these proceedings, naturally so because they are the leading speculative markets, that these amendments are presented by the Grain Committee on National Affairs on behalf of all of the exchanges of the country; and, with your permission, I would like to file with the secretary 20 copies of these amendments. I thank you.

Senator MURPHY. We will be glad to have them.

Mr. GOLDSMITH. Mr. Chairman, just one final word. I thought Mr. Thatcher made it clear that there was objection to a changing of the provisions of the bill in regard to delivery. We had other witnesses who might have amplified those objections. Because of the time limitation and the request that we close our case by all means by 5 o'clock today we have not elaborated, but our position is that the bill as recommended by the Department and as passed by the House represents substantially our stand, and without discussing the merits or demerits of technical changes mentioned by Mr. Sturtevant, certainly on the one question of time for delivery the farm group believes the bill should stand as it now stands, and we should like the opportunity to file for the record any matter by way of brief in regard to the three matters that apparently were not covered in our discussions before this committee.

Mr. STURTEVANT. May we have the same privilege, Mr. Chairman?

Senator MURPHY. Yes; we will give you both the same privilege.

Senator NORRIS. How soon, Mr. Chairman? We ought to fix the time because these hearings ought to be printed without any delay, if possible. This bill is on the calendar of the Senate and may come up very soon.

Mr. GOLDSMITH. Two days will be enough for us; in fact, we can get it in in one day.

Mr. STURTEVANT. I think, Mr. Chairman, we ought to have a little bit longer than 2 days.

Mr. HOWARD W. VESEY. I think we ought to have more than 2 days. Could we have until next Tuesday?

Senator NORRIS. Mr. Chairman, if I thought this bill would not come up until then I would not have any objection whatever, no

matter what the time was, but the printing will not take place, very likely, until these are in, and the thing has got to stand in status quo until that time, and assuming that the Senate takes this bill up before these hearings are printed, both sides are going to be very greatly handicapped because they will not be able to use the printed hearings there, and the time that these gentlemen are asking for may defeat the very ends that they are trying to bring about. I suggest to them that these statements ought to be filed just as soon as possible.

Mr. GOLDSMITH. Mr. Chairman, in line with Senator Norris' suggestion, we desire to waive any right to file any briefs. The board of trade or the opponents of the bill have discussed at length the reasons for their amendments. We are content to leave them with this committee with our silence meaning whatever it does mean.

Senator POPE. In other words, leave the record as it now stands?

Mr. GOLDSMITH. Leave the record as it now stands.

Mr. STURTEVANT. We withdraw our request, Mr. Chairman.

Senator NORRIS. All right, then, that settles it.

Senator MURPHY. Then, gentlemen, this concludes the hearing on this matter.

(Whereupon, at 5 p. m., the committee adjourned.)

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